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JUL 18 1980

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BY THE COMPTROLLER GENERAL

COMPLETED

Report To The Congress

OF THE UNITED STATES

ORIGINAL

Additional Management Improvements Are Needed To Speed Case Processing At The Federal Energy Regulatory Commission

Despite notable progress resulting from actions the Commission has taken and continues to take toward improving case management, the agency still faces a large volume of backlogged cases and lengthy processing delays. At the end of fiscal year 1979, over 15,000 cases were pending, many of which were backlogged--i.e., beyond what the Commission considers a reasonable processing time--including some that had been pending for over 17 years. The Commission also recently projected that close to 13,000 cases may be pending at the end of fiscal year 1980.

Each day these problems remain uncorrected, they continue to add significantly to the costs of both regulated companies and consumers. Clearly, the Commission needs to be even more aggressive toward improving its current case processing procedures.

GAO recommendations in this report will help effect most of these improvements under existing legislation, staffing, and funding levels. However, certain legislative recommendations are also included to increase incentives for administrative law judges to expedite the hearings process.

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WASHINGTON, D.C. 20548

B-197573

To the President of the Senate and the
Speaker of the House of Representatives

This report discusses additional improvements needed in the Federal Energy Regulatory Commission's management of its caseload. This report contains a recommendation for consideration by the Congress, and points toward the need for strong congressional oversight to assure that improvements are implemented.

We asked the Commission's Chairman for formal comments on this report. None were obtained. However, we did obtain informal comments from the Commission's staff, and based on these comments, made revisions to the report as appropriate.

We are sending copies of the report to the Director, Office of Management and Budget; the Secretary of Energy; and the Chairman, Federal Energy Regulatory Commission.

Elmer B. Staats
Comptroller General
of the United States

A

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

ADDITIONAL MANAGEMENT IMPROVEMENTS ARE NEEDED TO SPEED CASE PROCESSING AT THE FEDERAL ENERGY REGULATORY COMMISSION

DIGEST

Numerous management problems which the Federal Energy Regulatory Commission largely inherited from its predecessor, the Federal Power Commission, have resulted in extensive delays in processing various types of applications (such as rate increase and licensing requests) from the electric power, natural gas, and oil pipeline industries. At the end of fiscal year 1979, over 15,000 cases were pending, many of which were backlogged--i.e., beyond what the Commission considers a reasonable processing time--including some that had been pending for over 17 years.

Despite notable progress resulting from actions the Commission has taken and continues to take to improve case management, GAO found that it needs to be even more aggressive in expediting case processing in each of its major case processing phases--technical analysis, hearings, and Commission decisionmaking. Each day these problems continue to add significantly to the costs of the regulated companies and consumers. For example, the Commission's Chairman recently testified before the Congress that every month of delay in resolving a case involving a new hydroelectric project proposal can add $6 million to the cost of the project due to rising construction costs. Such costs are eventually passed on to consumers. (See p. 13.)

This report primarily focuses on the need for near-term improvements by the Commission under existing legislation, staffing, and funding levels, and the need for strong congressional oversight in the future to assure their implementation.

However, certain legislative recommendations have also been included in this report to increase incentives for administrative law judges to expedite the hearing process. (See p. 47.)

IMPROVEMENTS NEEDED IN TECHNICAL ANALYSIS

It often takes more than 1 year, and sometimes more than 5, for the Commission's technical staff to review incoming applications. This review is a complex task, beginning when an application is received and ending when it is either ordered to hearing or sent directly to the Commission with a staff recommendation for its disposition. Although the Commission has made some progress in reducing the processing time for completing technical analysis, at least two major factors still contribute to unnecessary delays:

--Large numbers of deficient or incomplete applications are received, necessitating an inordinate amount of staff time to review them.

--Extensive delays in the Commission's preparation of environmental impact statements are resulting in delays of up to 5 years in some cases.

GAO found that deficient applications are caused, in part, by the Commission not clearly defining what data it requires. Also, in instances where preparation of a complete application would require more time, the lack of appropriate Commission incentives have resulted in some intentionally filed incomplete applications. The long delays in completing environmental compliance reviews, on the other hand, were primarily attributable to poor interagency coordination and inordinate delays in starting environmental reviews. (See. p. 16.)

To improve the quality of filings and minimize application deficiencies, GAO recommends that the Commission,

--impose reasonable, but strict, deadlines on applicant response time to Commission staff inquiries and on staff review time;

--use fines and reject incomplete applications to discourage unnecessary applicant delays in resolving deficiencies, when such action is in the public interest; and

--simplify and clarify applicant data requirements.

Also, to expedite environmental review and the preparation of environmental impact statements, GAO recommends that the Commission,

--require its staff to begin preparing such statements immediately after its initial review of an application and

--intensify its efforts to enter into written interagency coordination agreements with cognizant agencies which establishes a reasonable time period for these agencies to comment on the environmental impact of hydroelectric projects.

These and other recommendations are noted in the body of our report. (See pp. 25 and 26.)

IMPROVEMENTS NEEDED IN THE HEARING PROCESS

Although less than 1 percent of the Commission's cases go to hearing, they include almost half of the most energy-critical--i.e., those having a significant impact on the Nation's non-nuclear energy supplies and policy. This phase of the regulatory process resembles a civil court action in which testimony is taken and arguments are heard. Public interest demands that these cases be resolved as quickly as possible. However, they are not. In fact, the hearing process typically takes about 2 years and, in some cases, more than 5 years to complete. GAO found that the principal causes of unnecessary delay were inadequate incentives--resulting in inordinate delays in the Commission's final review and decision on law judge initial decisions, interlocutory appeals, and settlements--for administrative law judges and for the Commission itself to expedite the hearing process. (See p. 27.)

To increase incentives for administrative law judges to expedite the hearing process, GAO continues to recommend that the Congress assign the responsibility for periodic evaluation of law judge performance to an organization other than the employing agency.

In addition, to expedite the hearing process, GAO recommends that the Commission seek the cooperation of its Chief Administrative Law Judge in discouraging unnecessary delays during the hearings process by,

- --urging all law judges to more critically evaluate requests for time extensions, particularly those which violate Commission rules, and to grant them only in exceptional circumstances and

- --urging all law judges to require applicants, staff, intervenors, and all other parties to a proceeding to file statements of issues and position prior to the commencement of hearings (preferably at the prehearing conference) and at the close of hearings.

GAO also recommends that the Commission expedite the processing of cases through hearings by

- --more strictly adhering to its own rules on interlocutory appeals, allowing exceptions to its automatic denial of appeals only in the most extraordinary circumstances;

- --imposing reasonable deadlines on final Commission action for all settlements; and

- --imposing a mandatory 30-day time limit on the total comment period for uncontested settlements.

These and other recommendations are noted in the body of our report. (See pp. 46 and 47.)

IMPROVEMENTS NEEDED IN COMMISSION DECISIONMAKING

Commission decisionmaking is the final phase of the caseload management process, but often consumes one-half to three-fourths of total case processing time. This phase begins with the completion of technical analysis and memo preparation for nonhearing cases or with the issuance of a judge's initial decision in hearing cases and ends when the Commission issues its final decision. It also includes completion of an intermediate review by the Commission's legal staff before the Commission makes its final decision, and occasionally involves the Commission's rehearing its "final" decision.

GAO identified certain procedural problems which can collectively delay this phase for over 1 year. These include:

--Inefficient intermediate legal review procedures for both hearing and nonhearing cases.

--Inadequate managerial accountability for new cases pending final Commission action or old cases pending its reconsideration.

--Significant limitations on the Commission's ability to expedite consideration of even its highest priority energy decisions because of insufficient delegations of authority. (See p. 48.)

To expedite decisionmaking, GAO recommends that the Commission:

--Improve the efficiency and effectiveness of its legal review procedures by

(1) encouraging the heads of the Office of the General Counsel and technical staff offices to meet periodically to resolve their mutual concerns and establish reasonable constraints on the format, content, and support of technical staff input to the General Counsel;

(2) encouraging the Director of the Office of Opinions and Reviews and the Chief Administrative Law Judge to meet periodically to resolve their mutual concerns and establish reasonable constraints on the form, content, citations, support, and summary of law judge initial decisions; and

(3) reviewing options for limiting and expediting the OOR review process and revising OOR review policy to reflect those options which would best accomplish this objective.

--Increase managerial accountability for cases pending final Commission action or reconsideration by developing a more reliable program branch-recordkeeping and case-tracking system to monitor cases pending final Commission decision.

--Increase the delegation of Commission authority for non-critical case decision-making by seeking appropriate congressional authority to delegate those functions for which the Commission currently lacks legal authority.

These and other recommendations are noted in the body of our report. (See pp. 60 to 62.)

OVERALL MANAGERIAL INITIATIVES NEEDED

Certain overall managerial initiatives are needed to address the Commission's broader problems of managerial control, accountability, and regulatory efficiency, which include:

--Inadequate managerial accountability for processing delays, efficiency, and overall work performance due to an unjustifiable reluctance on the part of management to assign project managers to more than 1 percent of its caseload in process.

--Serious deficiences in the Commission's management information system caused by an incomplete, decentralized, and inaccurate data base and a cumbersome, time-consuming manual reporting system.

--Lack of incentives such as deadlines, monetary fines, and case dismissal to expedite case processing because of serious doubts concerning the Commission's authority to employ such techniques to discourage delay.

--Inadequate use of generic rulemaking to prevent unnecessary relitigation of common, or "generic," issues in the absence of any agreement among Commission staff, industry, and consumer groups regarding the need for its implementation. (See p. 63.)

Therefore, GAO recommends that the Commission:

--Increase the number of staff members designated as project managers and expand their current role.

--Increase the accuracy, completeness, and efficiency of the present management information system by: (1) incorporating verified historical data on average case processing time, (2) centralizing subsystem data bases, (3) supplementing the manual reporting system with more detailed information to meet the needs of lower level management, and (4) fully automating the method for preparing monthly management information system status reports.

--Increase incentives for expediting case processing by

(1) establishing and strictly enforcing reasonable target dates and deadlines for all parties to a case and

(2) seeking from the Congress new legislative authority to impose monetary penalties of up to $25,000 a day.

--Expand the use of generic rulemaking to prevent unnecessary relitigation of common, or generic issues.

These and other recommendations are noted in the body of our report. (See pp. 73 and 74.)

On February 7, 1980, GAO asked the Commission's Chairman for formal comments on this report. However, such comments were not provided. GAO did obtain informal comments from the Commission's staff, and based on these comments, made revisions to the report as appropriate.

ABBREVIATIONS

ALJ	administrative law judge
Bcf	billion cubic feet
DOE	Department of Energy
EEI	Edison Electric Institute
EIS	environmental impact statement
FERC	Federal Energy Regulatory Commission
FPC	Federal Power Commission
GAO	General Accounting Office
ICC	Interstate Commerce Commission
Mcf	thousand cubic feet
MIS	Management Information System
MMcf	million cubic feet
NEA	National Energy Act of 1978
OGC	Office of General Counsel
OPM	Office of Personnel Management

CHAPTER 1

OVERVIEW

Under the terms of the Department of Energy Organization Act (P.L. 95-91), the Congress created the Federal Energy Regulatory Commission (FERC) on October 1, 1977, as an independent regulatory agency within the Department of Energy. Its primary responsibilities are to regulate directly or indirectly electric power, natural gas, and oil in interstate commerce. In addition, under terms of the same act, the Commission was assigned most of the functions of the former Federal Power Commission (FPC); jurisdiction over oil pipeline rates, previously the responsibility of the Interstate Commerce Commission; and other functions previously the responsibility of the Federal Energy Administration, the Energy Research and Development Administration, and other agencies.

The passage of the National Energy Act in 1978 1/ even further increased the Commission's regulatory burden. This legislation gave the Commission many new and, in some instances, still undefined regulatory functions. Three of its five major components--the Natural Gas Policy Act, the Public Utility Regulatory Policies Act, and the Power Plant and Industrial Fuel Use Act--presently bear heavily on the Commission. According to recent congressional testimony by the Chairman, FERC, the National Gas Policy Act imposes upon the Commission new additional regulatory responsibility for some 45 percent of the market for natural gas by bringing much of the previously unregulated intrastate market under the Commission's jurisdiction. On this basis, the Commission's regulatory responsibilities have clearly become far more demanding of its resources than those assigned to its predecessor, the Federal Power Commission.

Effective administration of these responsibilities is necessary to provide consumers adequate supplies of energy at reasonable prices and give energy producers the incentives necessary to increase domestic supplies. However, the Commission's ability to carry out its responsibilities has been severely restrained by an inefficient case management process.

1/Five separate pieces of legislation comprise what is referred to as the National Energy Act, the Public Utility Regulatory Policies Act of 1978, the Energy Tax Act of 1978, the National Energy Conservation Act of 1978, the Power Plant and Industrial Fuel Use Act of 1978 and the Natural Gas Policy Act of 1978.

Despite notable progress resulting from actions the Commission has taken and continues to take toward improving its efficiency, it still faces an unacceptable backlog [1] of more than 10,000 unresolved cases, some as old as 17 years.

Therefore, our review focused on

--determining the extent and cause of inefficiencies in the Commission's caseload management process,

--evaluating the appropriateness of certain prior study recommendations, and

--developing appropriate new recommendations to the Congress, as well as to the Commission regarding actions that may be taken now to expedite case processing under its existing legislative authority as well as staffing and funding levels.

This chapter will discuss the justification for and scope of our review. Chapter 2 will address the cause, extent, and impact of inefficiencies in the Commission's case management process; and the balance of our report will address our specific findings, conclusions, and recommendations for near-term improvement in the Commission's caseload management process.

The final portion of the report will be divided into four chapter headings:

--Improvements needed in technical analysis.

--Improvements needed in the hearings process.

--Improvements needed in Commission decisionmaking.

--Overall managerial initiatives needed.

HOW THE COMMISSION FUNCTIONS

The Commission carries out its assigned functions either through rulemaking or adjudicatory procedures. Under rulemaking, the Commission may propose a general rule or change in its regulations. The Commission then requests comments on these proposed rules and publishes its final decision, along with any comments received, in the Federal Register. The Commission also may initiate formal adjudicatory proceedings to deal with applications submitted by the companies it regulates on a case-by-case basis. As such, if there is any objection to what is proposed in an application and a legal settlement cannot be reached, the proposal, by law, must be presented at a formal court-room-type hearing before one of FERC's administrative law judges (ALJs). The ALJ's decision is then either adopted, modified, or reversed by the full Commission. Final Commission decisions can be appealed to the U.S. Courts of Appeal.

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[1] The Commission defines a backlogged case as one that has been pending longer than what the staff estimates is a reasonable length of time to complete that type of case.

BUDGET AND STAFFING CONCERNS

Commission officials maintain that, despite adequate funding and staffing levels, 1/ the Commission is still faced with a temporary problem of not being able to commit adequate resources toward the reduction of case backlog.

Commission officials primarily attribute this problem to three factors: (1) priority hiring for vacancies related to fulfilling the Commission's new National Energy Act of 1978 responsibilities; (2) delays in Department of Energy classification of the Commission's newly authorized positions; and (3) a turnover rate in excess of 10 percent for personnel. Because of these factors, during March 21, 1979, testimony regarding the Commission's 1980 budget request, the Chairman indicated that FERC was able to hire only 60 people to fill 323 positions originally authorized for fiscal year 1979.

To make matters worse, however, the Commission maintains that in spite of more recently attaining 95 percent of authorized staffing levels, its workload problems have been temporarily compounded by a need to reassign approximately 200 personnel from reduction of case backlog efforts to the Commission's new responsibilities under the National Energy Act (NEA). In fact, in fiscal year 1979, Commission officials projected that redeployment of these 200 personnel would significantly hamper its ability to reduce its case backlog, particularly so during the next 10 years.

The table on page 5, submitted to the Office of Management and Budget on October 12, 1978, demonstrates the projected impact of not committing these 200, in addition to

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1/For fiscal year 1980, the Commission was authorized a total budget of $73.9 million and 1,800 positions.

13 other positions, to the reduction of the Commision backlog.

In February 1980, the Executive Director, FERC, informed us that the Commission hopes to begin a gradual redeployment of these 200 temporarily assigned NEA positions back to backlog reduction efforts by April 1980. However, in view of the Commission's recent projections of a large increase in future filings--from 37,953 in fiscal year 1979 to 69,467 in fiscal year 1980--and in the absence of a comparable immediate increase in Commission staff, we suspect that even gradual redeployment of staff will have only a minimal impact, if any, on the near-term reduction of case backlog and lengthy case processing delays.

COMMISSION EFFORTS TO IMPROVE ITS EFFICIENCY

Since its inception on October 1, 1977, the Federal Energy Regulatory Commission has given high priority to reducing backlog and delay. As such, it has taken a number of measures to improve its regulatory efficiency under existing staffing and funding levels. Some of the more significant actions include

--establishing a management information system to identify existent and potential bottlenecks in the Commission's regulatory process (see pp. 65 to 67);

--delegating authority to the Commission's Secretary and Office Directors to make decisions on routine matters which previously required formal deliberation and decision by the full Commission (see pp. 56 to 58);

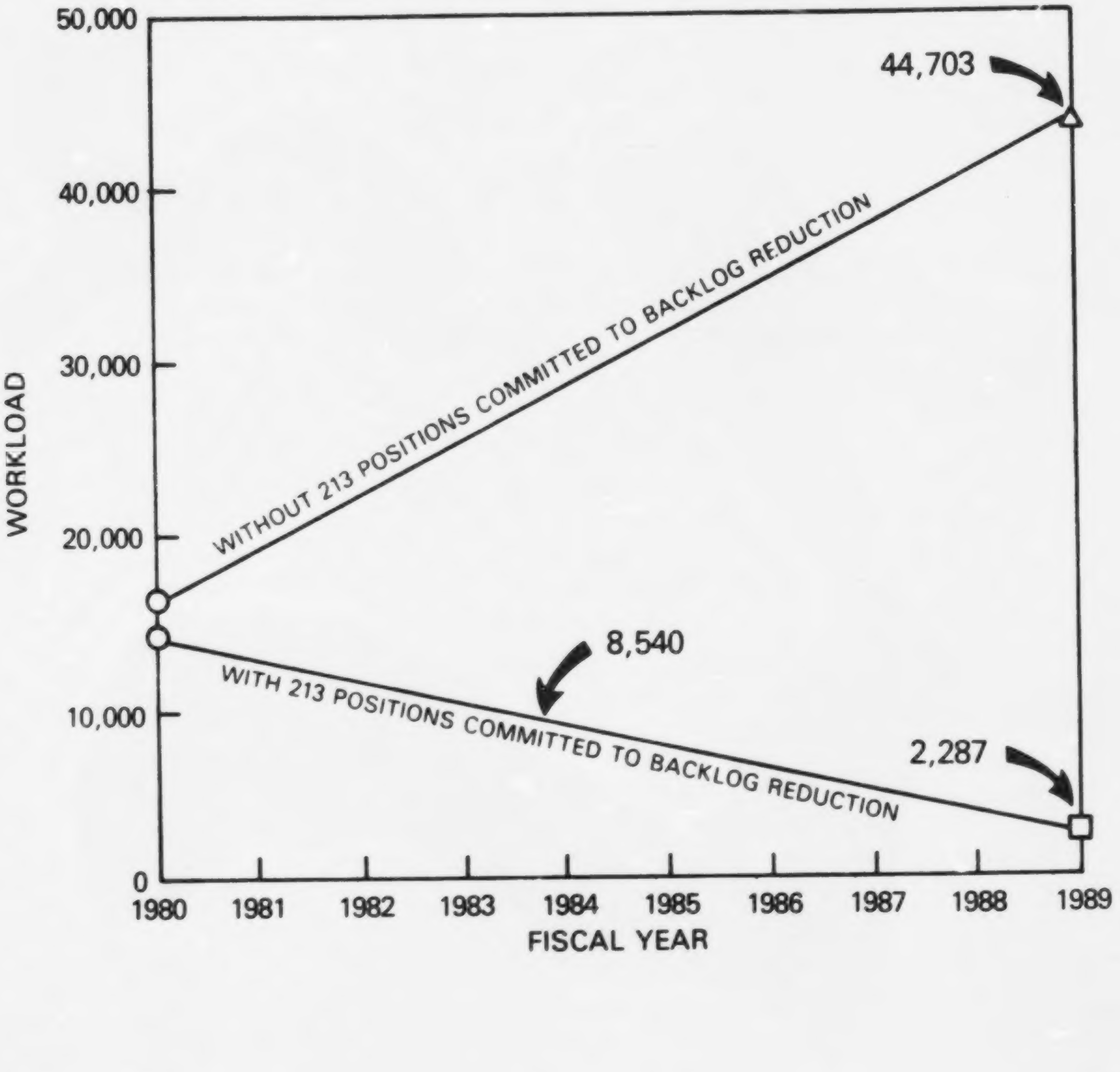
--implementing procedures to encourage and expedite settlement agreements (see pp. 38 to 41);

--assigning project managers to lead responsibility for coordinating technical staff review of certain critical energy cases (see pp. 66 and 67);

--simplifying certain data requirements on applications for new hydroelectric projects (see p. 18); and

--conducting seminars and initiating a telephone "hot-line" to answer questions from the industry on new regulations resulting from the Natural Gas Policy Act.

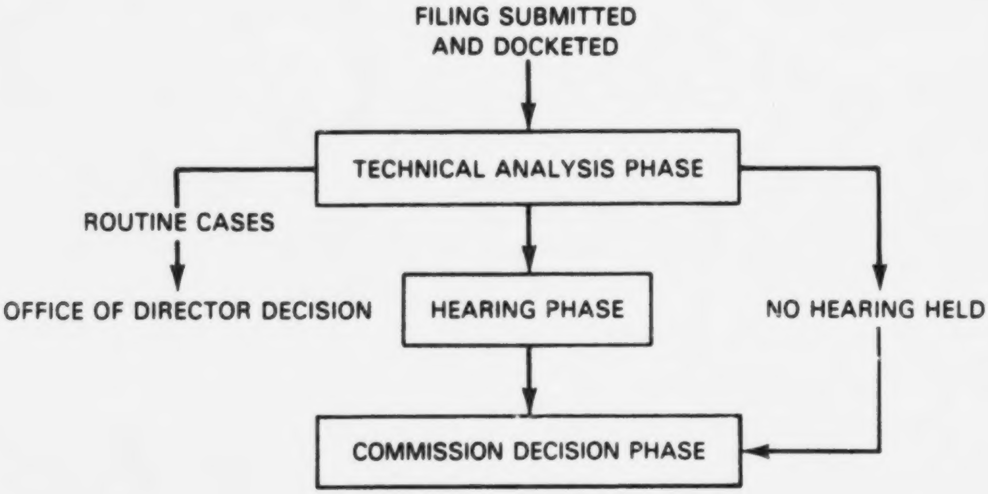
FERC BACKLOG: 10 YEAR FORECAST



However, despite notable progress resulting from the actions over the past 2-1/2 years, the Commission's regulatory process continues to be hampered by inordinate delays and sizeable case backlogs.

THE CASELOAD MANAGEMENT PROCESS

Recent Commission internal management studies identify over 80 different types of cases being subjected to the Commission decisionmaking process. However, while individual case processing steps do vary widely from case to case, all cases can, for analytical purposes, be divided into three phases: technical analysis, hearing, and Commission decision. For simplicity, throughout the balance of this report, we will discuss needed case management improvements in the context of these three phases. [1] Below is a simplified flow chart showing how all hearing, nonhearing, and routine cases processed by the Commission are related to these three phases:


FILING SUBMITTED AND DOCKETED
TECHNICAL ANALYSIS PHASE
ROUTINE CASES
OFFICE OF DIRECTOR DECISION
HEARING PHASE
NO HEARING HELD
COMMISSION DECISION PHASE

REPORT OBJECTIVE

Because of the urgency of the backlog and problems at the Commission, our report primarily concentrates on identifying near-term managerial improvements the Commission can make under existing legislation, staffing, and funding levels. This approach significantly contrasts with the approach taken in a number of the prior management studies, in that these other studies primarily concentrate on the need for remedial or enabling legislation to improve the regulatory process at the Commission. Many such legislative changes have already become subject to extensive congressional debate. For example, the Congress has been considering, for 9 years now, whether or not to require the use of modified adjudicatory procedures instead of traditional trial-type hearings to expedite processing for certain types of cases at regulatory agencies such as the Commission.

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[1] A fuller explanation of these three phases can be found in chs. 3, 4, and 5.

SCOPE OF OUR REVIEW

Our review included an assessment of recommendations made in prior management studies of FERC, FPC, and the Federal regulatory process--by the Commission itself, by us, and others--over the last 4 years. In addition, we interviewed numerous Commission office heads, branch chiefs, administrative law judges, attorneys, and technical staff members to obtain their views on the need for additional managerial improvements. We also reviewed corrective actions already taken or proposed by the Commission to improve its regulatory process. Because the Commission is continuing to make improvements in managing its caseload, keeping this wide-scoped report current has been difficult.

We also examined available Commission records and case management status reports on the progress of more than 1,100 cases in various stages of completion, including: (1) close to 100 of the Commission's most critical energy projects 1/ (see p. 11); (2) 59 regulatory cases resolved by administrative law judge initial decisions (see p. 29); (3) 972 selected natural gas, hydroelectric, and electric cases (see pp. 12 and 13).

1/FERC defines energy cases as "critical" if they are likely to have a significant impact on the nation's energy supply or on questions of energy policy. For example, each critical energy project involves more than 1.5 megawatts per year for hydroelectric licenses or more than 25 million cubic feet per day for gas producers and pipelines. Issue-critical projects are those likely to set major precedents or to serve as lead cases whose outcomes will affect other major filings. Therefore, rate cases of potentially major impact on the industry or customers of the industry are considered issue critical.

PRIOR STUDIES

Over the past 4 years, prior management studies have been conducted dealing with the subject of case management at FERC and its predecessor, the Federal Power Commission. In addition, there have been several more general studies of regulatory agency case management conducted over the same period that are applicable to Commission operations. Many of these studies have repeatedly identified similar causes of delay common to such regulatory processes as the Commission's and make numerous and often duplicative recommendations for remedial action. At least 4 different studies were conducted by FERC or its predecessor, FPC, (one FPC study alone cost taxpayers more than a half million dollars), two by the Congress, and five by us. (A complete listing of these studies is contained in app. I.) However, FERC has been slow to act on many of the recommendations. These recommendations and our views will be discussed throughout the balance of this report.

CHAPTER 2

EXTENT AND IMPACT OF DELAY ON THE COMMISSION'S CASELOAD MANAGEMENT PROCESS

Regulatory delay caused primarily by inefficient case management at the Commission has resulted in unacceptable delays and case backlog. At the end of fiscal year 1979, over 15,000 cases were pending, many of which were backlogged--i.e., beyond what the Commission considers a reasonable processing time--including some that have been pending for over 17 years. Such delays have resulted in numerous problems for the energy industry regulated by the Commission and energy consumers.

Although most costs of delay cannot be quantified, some can. For example, the Commission's Chairman recently testified before the Congress that every month of delay adds $6 million to the cost of each new hydroelectric project awaiting Commission approval, due to rising construction costs. Such costs are eventually passed on to the consumers.

COMMISSION'S WORKLOAD HISTORY

The Commission's Chairman has testified repeatedly that his agency continues to suffer from an inefficient case management process, most of which has been inherited from its predecessor, the Federal Power Commission. Consequently, despite continued efforts by the Commission to improve its regulatory efficiency, unnecessarily lengthy delays and continuing case backlog remain among the most pressing problems currently confronting Commission management.

Commission records show that between fiscal years 1978 and 1979, the number of filings pending at the end of each fiscal year has decreased from 16,065 to 15,627. Recent Commission projections also reflect that the agency hopes to reduce the number of pending cases even further to 13,997 at the end of fiscal year 1980. However, under existing staff levels, this projection may be overly optimistic because of (1) the Commission's burden of responsibilities under NEA (see pp. 1 to 5), (2) projections of substantial increases in the number of new filings during fiscal year 1980 (i.e., a projected increase from 37,953 in fiscal year 1979 to 65,562 in fiscal year 1980), as well as (3) continuing problems with unreasonably lengthy processing delays and volumes of cases in backlog. 1/ In any case, we believe procedural changes, as outlined in this report, are needed to reduce backlog and delay. In March 1979, the latest date for which backlog figures were available, the Commission reported that of 12,423 cases in process, 10,828--87 percent--could properly be described as backlogged, and seven were 17 years old.

The following table summarizes, by major Commission areas of responsibility, the number of backlogged cases and filings as of March 1979.

Major program activities	Total cases in process	Total cases in backlog
Hydro regulation	399	344
Electric power regulation	763	464
Gas regulation	10,861	9,981
Oil regulation	134	39
Total	12,257	10,829

EXTENT OF DELAY

The Chairman of FERC has testified before the Congress that in order to obtain a further reduction in unnecessary delays, the Commission must decrease the number of steps in case processing, receive an increase in staff resources, and simplify many regulatory and statutory requirements applicable to these proceedings.

1/The Commission defines a backlogged case as one that has been pending longer than what the staff estimates is a reasonable length of time to complete that type of case.

In this regard, the Commission has made a number of improvements in its procedures. However, according to Commission officials, recent agency management studies, and industry and consumer representatives, much more still needs to be done to reduce inordinately lengthy processing delays and continuing case backlog problems. The following table summarizes what we found to be a lengthy average time consumed to complete various phases of the Commission's regulatory process for 91 of its most critical energy cases and for more than 150 natural gas, hydroelectric, and electric cases which we selected for review.

FERC's Most Energy-Critical Projects Completed During April 1, 1978, to April 1, 1979

Type of case	No. of cases	Average number of months to complete: Technical analysis phase	Hearing phase	Commission decision phase	Total months (note a)
Major hydro-electric license	13	24	27	4	37
Gas pipeline rate	4	15	11	2	28
Gas pipeline certificate	45	4	9	2	7
Gas producer rate	2	2	5	11	18
Gas producer certificate	27	4	4	4	9

a/The total represents a weighted average, as all cases do not involve a hearing.

Cases Completed During Calendar Year 1978 in Selected Product Categories (note a)

		Average number of months to complete			
Type of case	No. of cases	Technical analysis phase	Hearing phase	Commission decision phase	Total months (note b)
Major hydro-electric license	13	85	95	7	99
Electric rate	60	1	17	10	27
Gas pipeline certificate	85	6	9	10	17

a/These cases represent both critical as well as non-critical cases.

b/The total represents a weighted average, as all cases do not involve a hearing.

We also found wide variations in the time consumed to complete various stages of the regulatory process. For example, in the 91 critical energy projects we examined between April 1, 1978, and April 1, 1979,

--the technical analysis phase took up to 90 months for major hydroelectric licenses, and 57 months for pipeline rate cases;

--the hearing phase took up to 126 months for major hydroelectric licenses, and up to 33 months for pipeline rate cases; and

--the Commission's decision phase took up to 11 months for major hydroelectric licenses, and a high of 11 months for pipeline rate cases.

We also found that out of 814 hydroelectric, electric, and gas cases awaiting Commission action as of April 1, 1979, 256 had been waiting action for over 4 years. In addition, 28 percent of the hydroelectric cases had been pending for more than 10 years, and over 25 percent of the gas pipeline certificates and electric rate cases have been waiting action for more than 4 years. The following table summarizes our findings.

Type of case	Total cases pending, April 1, 1979	Percentage of cases			
		1-4 years	4-10 years	10-15 years	Over 15 years
		--------(percent)---------			
Hydroelectric license	169	29	39	28	4
Electric rate	237	83	17	-	-
Gas pipeline rate	154	87	13	-	-
Gas pipeline certificate	254	70	30	-	-
Total	814				

In addition, a May 1978 Commission list of its 10 oldest pending cases, compiled at the request of a congressional subcommittee, pointed out that the ages of some cases at that time ranged from 15 to 17 years. To make matters even worse, we found at least 5 of these cases still pending almost 2 years later. We also found at least 15 other cases over 15 years old. Clearly, something is seriously wrong with the Commission's existing decisionmaking process.

IMPACT OF DELAY

Every day of delay in processing the Commission's backlogged cases adds significantly to the costs of regulated companies and to consumers. Some of these costs can be quantified, others cannot.

During congressional appropriation hearings in May 1978, the Chairman of FERC testified that, because of rising construction costs, every month of delay adds $6 million to the cost of new hydroelectric projects awaiting final Commission approval. Consumer energy bills ultimately reflect these costs. Further, according to the Chairman, if the Commission could reduce the time needed to complete action on these matters by an average of only 6 months, it could save an amount greater than the Commission's original $63.8 million budget request for fiscal year 1979.

Undue delay has also proved expensive for participants in regulatory proceedings. Lengthy cross-examinations of witnesses and voluminous testimony; lack of adequate advance preparation by staff, applicants, and intervenors; as well as liberally granted postponements all contribute to unnecessary delay, large staff and budget expenditures, and high participant legal costs. For example, according to a Senate study, a 7-year licensing process at the Commission cost one power company about $300,000 in legal fees for a single law firm. These costs ultimately show up in consumers' energy bills.

Delay has also had a negative effect on the Nation's energy supply. Commission records indicate that 100 of its most critical cases, representing more than 15 billion cubic feet of gas per day and more than 6,000 megawatts of electricity per year, were pending on February 1, 1979. According to the Commission, these delays denied consumers critical energy supplies and frustrated accomplishment of our national objective to minimize dependence on foreign energy sources.

Inordinate delays also adversely effected the Commission's ability to assure consumers just and reasonable rates. In this regard, the Commission, by statute, currently allows regulated wholesale utility companies, after 5 months from initial application, to collect proposed rate increases prior to the Commission's final decision. Further, although these rates are subject to refund, we found that the Commission can often take years to reach a decision in these cases. In fact, in a recently released report concerning the wholesale electric rate decision process, the Commission's Chairman stated that many rate decisions can take 2 to 4 years to reach conclusion, some even longer. In the meantime, consumers and purchasing retail utilities are required to pay rates which may be both excessive and discriminatory. In addition, there are no assurances that those who paid the excessive rates actually receive refunds. Also, because of the uncertainty of having their financial statements reflect revenues subject to refund, many utilities maintain that it can have an adverse effect on their ability to obtain loans from banks. Yet, in spite of the adverse impact, the Commission has allowed many such increases. Between fiscal years 1976 and 1978, $1.7 billion in refunds were ordered on pipeline rate cases alone.

Inordinate delays have also resulted in a "price squeeze" on utility retailers for indeterminate periods. As such, nonregulated purchasing retail utilities under State control are squeezed between their supplier's higher wholesale rates authorized by the Commission and the lower rates they are in turn permitted by the state to charge. As such, the price squeeze effect prevents the retail buyer from competing with a wholesaler serving the same territory.

Lengthy delays in individual cases can also have a "domino effect" on other cases pending Commission decision. For example, the Commission currently allows regulated utilities to repeatedly update and amend data filed in support of requested rate increases. This unrestricted practice, which not only delays action on these amended filings but on other pending cases as well, has been described as the "fast paper shuffle." Another problem is that current Commission rules allow utilities to take advantage of lengthy delays by filing successive applications for rate increases on the same project without awaiting disposition of earlier applications. Therefore, a utility can have several rate requests pending and each rate justified by a slightly different reason. As such, if the first is overturned, the others do not automatically fall. As a result of this practice which is described as "pancaking," both consumers and non-regulated utility customers may pay excessive unapproved rates for many years. In fact, in the wholesale rate study referred to earlier, the Commission's Chairman points out that in one such case from 1971 through late 1979, customers paid such unapproved rates under nine successive "pancaked" filings.

CHAPTER 3

IMPROVEMENTS NEEDED IN TECHNICAL ANALYSIS

It often takes 1 year, and sometimes 6, for FERC's technical staff to review incoming applications. Further, the Commission has made only limited progress in reducing the time it takes to complete this analysis. In this regard, we found at least two major factors contributing to unnecessary delay: specifically,

- --large numbers of deficient or incomplete applications being received, necessitating an inordinate amount of staff time to review them, and
- --extensive delays in the Commission's preparation of environmental impact statements (EISs), resulting in delays of up to 5 years in some cases.

Deficient applications are caused, in part, by the Commission not clearly defining what data it requires on applications. Also, in some instances, where preparation of a complete application would require more time, companies were found to have intentionally filed incomplete applications, in order to get FERC's technical staff to start its review as early as possible. These incomplete filings might be discouraged, however, through strict procedural deadlines, monetary fines, or rejecting incomplete applications.

Long delays in completing environmental compliance reviews, on the other hand, are primarily attributable to: (1) poor interagency coordination and (2) inordinate delays in starting the environmental impact assessment. All of these matters will be addressed in detail in this chapter.

For purposes of our discussion, FERC's technical analysis phase includes all initial staff review work performed on each application by such Commission technical offices as the Office of Electric Power Regulation, and the Office Pipeline and Producer Regulation. The process begins with the receipt of application. It ends with an application's being ordered to hearing or with a staff recommendation, regarding its disposition, that goes directly to the Commission. In addition, this phase may include an environmental compliance review and preparation of an environmental impact statement.

IMPROVEMENTS NEEDED TO EXPEDITE REVIEW OF APPLICATIONS

Large numbers of deficient applications (those that are incomplete or in need of revision) necessitating an inordinate amount of staff review time were found to be a frequent source of delay in the technical analysis phase. In fact, it is common for Commission staff to send an applicant several separate deficiency letters requesting additional information, as well as requests for revisions or amendments to the original applications. These deficiencies can remain unresolved for over 5 years and unnecessarily delay further case review. Quick resolution of these deficiencies continues to be hampered by unclear data requirements and a lack of control over how long it takes to receive and review all the information needed on an application. Yet, to date, the Commission has still not taken the necessary actions to reduce the volume of incomplete applications being received.

Better definition of applicant data requirements is needed

According to FERC officials and representatives of industry, current Commission filing requirements set forth in the Code of Federal Regulations are not always clear to either Commission staff or applicants. For example, the Edison Electric Institute (EEI), in a November 1978 letter complaint to the Commission, stated that the electric utility industry is greatly disturbed by the absence of specific filing standards under current Commission rules for rate filings. EEI noted that current Regulations require a "full explanation of the basis of each estimated figure." However, the phrase "full explanation" is subject to much interpretation and uncertainty. As a result, EEI maintains that many improper filings are made by the electric utility industry due to unclear data requirements.

The impact of unclear data requirements on applicants and the Commission can be severe. For example, the Commission stated that its decision on a 1970 hydroelectric dam project application was delayed for 14 months because of an improper initial filing by the applicant caused by unclear Commission rules on dam safety data requirements.

The Commission recently initiated a number of actions to simplify and better define the data it requires of applicants, but so far these efforts have been limited to certain types of cases. For example, under Orders 11, 54, and 59 (issued Sept. 5, 1978; Oct. 22, 1979; and Nov. 19, 1979, respectively), the Commission simplified the data it requires on hydroelectric project applications, and although we did not have the time to analyze the full impact of the new requirements, many applicants have acknowledged to the Commission that these new requirements are simpler and clearer. In addition, the Commission recently initiated two other measures to make its technical filing requirements and procedures easier to identify and comprehend. These measures include: (1) issuance of Orders 56 and 56a (Nov. 1, 1979, and Jan. 1, 1980, respectively), increasing the number and type of gas purchase facilities authorized to file abbreviated "budget" applications and (2) clarifying the status of non-jurisdictional gas pipelines under Order 25 (issued Mar. 27, 1979), thereby enabling interstate pipelines to obtain supplemental gas supplies from these sources. However, the Commission has yet to revise or clarify its data requirements for the other types of applications it receives.

FERC officials, as well as representatives of the industry and the public, have largely attributed the problem of unclear data requirements to the lack of a single source of information that includes filing requirements, applicable laws, regulations, policies, and procedures. However, despite the apparent recognition of this as a viable solution to the problem, no Commission action has been taken to develop this needed source of information.

To date, the Commission's data reform efforts have instead been primarily aimed at reducing the paperwork burden placed on applicants rather than at the impact of unclear data requirements on its own caseload burden. One Commission official stated that, although the Commission had hoped to address both the applicant's and its own caseload burden, only the burden on the applicants could be addressed because of inadequate staff. In this regard, the Commission initiated the elimination of 15 data collection forms, under Order No. 25 (issued Mar. 27, 1979) which will purportedly significantly reduce the Commission's present reporting burden on many electric power, natural gas, and oil companies subject to its jurisdiction. However, two agencies within the Department of Energy have indicated that some of the forms may be needed for their functions. Further, while we applaud FERC/s efforts to reduce respondents' burden, Commission officials expect this action to have only a minimal impact on reducing the Commission's own caseload burden and processing delays.

According to a recently issued report to the Congress by the Commission's Chairman, 1/ the Commission staff did, in August of last year, issue a proposed rulemaking for public comment which would make applicant filing requirements more comprehensive and standardized. This proposal is now being evaluated by the Commission's Advisory Committee on its Rules of Practice and Procedure that was formed in April 1979. However, this proposal is presently limited to initial filings for wholesale electric rate increases and its viability has not yet been challenged by sources outside the Commission nor have we properly researched it due to the recency of the proposal.

Therefore, in the absence of possible expansion of filing requirements, we believe that the Commission should, at a minimum, expand the ongoing data reform efforts to include a review of the quality and sufficiency of information it requires of applicants. Public comment and suggestions on this matter should also be sought. Based on this information, FERC could then take appropriate measures to simplify and clarify what data it requires of applicants. The Commission should also consider developing a centralized filing requirements source book and conduct seminars for the education of FERC and industry officials regarding current Commission rules on filing requirements. Such measures would eventually enable the Commission to reduce the problems of filing deficiencies and lost staff review time.

Stricter controls needed on the review of applications

However, even when data requirements are clear, certain companies might intentionally file incomplete applications so FERC's technical staff would start its review as soon as possible. Further, these incomplete applications can frequently remain unresolved for over a year, and unnecessarily delay further case review. These deficient applications are principally caused by

--liberal acceptance and processing of incomplete applications;

1/Report to Congress: Decisional Delay in Wholesale Electric Rate Increase Cases: Causes, Consequences and Possible Remedies. Charles B. Curtis, January 1980. This report was submitted to the Congress, pursuant to Section 207(b) of the Public Utility Regulatory Policies Act of 1978.

--a lack of strict deadlines to reduce lengthy periods for applicant response and staff review; and

--inadequate sanctions, such as monetary fines and rejecting incomplete applications, to discourage intentional applicant delays.

According to Commission officials, deficient applications fall into two categories. The most common type results from lack of compliance with data requirements found in Title 18 of the Code of Federal Regulations. For example, during 1978 the Commission staff sent more than 100 deficiency letters to one natural gas company alone. This company had failed to provide sufficient information on project justification, and until it did so, the application could not be processed. More recently, we also found that one gas case had been pending for more than 5 years because the company had not furnished sufficient data on environmental impact and safety. Some Commission officials suspect that in both cases, the applicant delay may have been intentional.

The other, and less common kind of application deficiency, involves the need for supplemental information not normally required. The staff cannot know that certain information is needed until they receive an application. For example, a 1978 hydroelectric case was delayed for more than a year because certain additional information on dam ownership was desired, although not usually required.

According to recent Commission internal management studies, both types of deficiences pose a problem in more than half of its 65 "product categories" of cases. The following table summarizes both types of deficiencies as a percentage of applications for selected FERC product categories where these figures equal or exceed 25 percent.

Product category	Type of application	Deficient Applications (percent)
Major hydroelectric licenses	Construction applications	75
	Relicense applications (without formal hearing)	50
Minor hydroelectric licenses	Construction applications	60
	New capacity applications	40
	Relicense applications	60
Electric licenses	Transmission license applications	40
Electric rate adjustment applications	Rate filings	30
Gas pipeline certificates	Construction and operation/transmission/exchange or facilities (without a formal hearing)	30
	Abandonment of existing facilities	75
	Import/export application	100
	Transportation agreements	25
	Allocation/Plans	95
Oil Pipeline	Rate adjustment applications	30

We also examined 91 cases, completed between April 1978 and April 1979, which FERC described as energy critical and found deficient applications required an average of 142 days to resolve. In fact, in 4 percent of these cases, resolution took more than 2 years.

Such application deficiencies are in large measure due to an informal Commission practice that permits the submission and processing of incomplete filings, although this practice does not comply with existing FERC rules.

Further, this is not the first time that deficient applications were recognized as a problem. Our prior study of hydroelectric licensing; 1/ a 1976 Federal Power Commission management study by Touche Ross, and Company; and a 1977 Senate Committee on Governmental Affairs study also identified deficient applications as a major source of unnecessary delay in technical analysis. Collectively, these three investigative reports suggested that the Commission use deadlines, monetary fines, and the threat of case dismissal to encourage complete filings. However, the problem continues. For example, our recent study 2/ showed that in 2 out of 11 cases sampled, applicants did not furnish complete data until 6 and 14 months after their initial filings. In this regard, the Commission maintains it continues to have doubts concerning its authority to impose fines for applicant delay as well as to dismiss a case. Consequently, neither fines nor dismissals have ever been used even when intentional delay is suspected. In the meantime, delays by applicants responding to Commission followup inquiries continue to add as much as 2 years to the technical analysis phase. In fact, as previously mentioned, in some 100 energy-critical cases with deficient applications we examined, followup inquiries added an average of 142 days to the process, and in 4 cases took more than 2 years to resolve.

One solution to the problem of incomplete applications was proposed over a year ago by the Commission's Executive Director. He suggested that the Commission send only one deficiency letter to an applicant warning that if he does not respond within 60 days, the filing will be automatically rejected. However, the Commission has not acted on this recommendation.

1/"Problems in Licensing Hydroelectric Projects" (RED-76-13, Sept. 23, 1975).

2/"Review of Administrative Law Judge Activities and the Hearing Process at the Federal Energy Regulatory Commission," (EMD-79-28, Feb. 13, 1979).

We believe the Commission should make the applicant's task as easy as possible, i.e., the Commission should clearly define what data it requires on applications. However, we also believe that the Commission should reject incomplete applications and discourage their submission through the use of deadlines, as proposed by its executive director, as well as through the use of monetary fines 1/ to assure an applicant's timely action.

More specifically, FERC must discontinue its present practice of routinely accepting and processing incomplete or deficient filings unless supplemental information is being requested that is not normally required under FERC's present rules and regulations. FERC should instead impose reasonable deadlines on applicant response time to staff inquiries to reduce the potential for unnecessary delays in resolving application deficiencies. Then upon expiration of these deadlines FERC should consider using monetary fines and case dismissal to discourage unnecessary applicant delay when such action is considered to be in the public interest.

NEED TO STREAMLINE PROCEDURES FOR PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

The Commission staff takes an average of about a year, and in three cases we found it took over 5 years, to perform an environmental review and prepare a final environmental impact statement on its cases. Significant problems contributing to this lengthy period include the following:

--EIS preparation is frequently not begun until months after environmental problems have been identified.

--Inadequate coordination exists between FERC and other cognizant Federal agencies in obtaining environmental comments on applications.

Commission rules (18 C.F.R. 2.80 to 2.82) require that, for certain types of cases, an application must include a report assessing the environmental impact of the proposal. On the basis of that report, Commission staff must perform an initial environmental review to decide if the proposal constitutes "a major Federal action significantly affecting the quality of human environment." If so, a draft and a final EIS is required.

1/See discussion on pages 69-71 concerning FERC's present authority to impose such sanctions.

However, many cases involving environmental consideration, particularly hydroelectric projects, have consumed substantial amounts of time. In fact, the preparation of an environmental impact statement has, in some instances, taken well over 5 years. The average time for completing such statements with respect to hydroelectric projects, from January 1976 through May 1979, was close to 1 year. However, in three instances, EIS preparation took well over 5 years.

Commission officials stated that delays were caused in part by the fact that due to staff shortages, staff members do not usually begin statement preparation until several months after they identify all major environmental problems. According to these officials, delays frequently occur in complex or controversial cases that involve numerous protestors and problems that may not be readily identifiable. Such filings frequently require followup correspondence, on-site inspection, and other non-routine procedures to resolve these problems.

A May 1978 Commission internal management report suggests that, when feasible, earlier staff statement preparation could reduce delay by as much as 4 to 8 months. One Commission official has also indicated that this procedure could expedite up to 50 percent of the environmental cases under review. Further, additional staff have recently been assigned, which may allow earlier assignment of staff to these cases.

Another problem concerning EIS preparation is that, despite prior recommendations by Touche Ross and us, the Commission continues to experience problems in its coordination with other agencies on environmental impact statements. According to Commission officials, environmental impact statements on hydroelectric projects require the Commission to obtain written comments from the cognizant Federal agencies such as the Department of the Interior, the Environmental Protection Agency, the U.S. Army Corps of Engineers, and the appropriate State agency. Such coordination consumes inordinate amounts of time, due to lack of written interagency agreements on how long such interagency comments should take. This problem was pointed out by us in a 1975 report and by a 1976 Touche Ross management study conducted under a Federal Power Commission contract. However, despite limited efforts by the Commission to reach interagency agreements, this matter continues to be a problem. The average time for an agency to respond to hydroelectric environmental impact statements completed between January 1, 1976, and May 29, 1979, was 280 days. Further, in one instance it took 1.7 years and in another 3.4 years. In addition, as noted earlier, we found three other hydroelectric cases, where it took more than 5 years to produce a final EIS.

Considering the possibility of up to 5 years of delay in some cases, the Commission clearly needs to take some type of remedial action to expedite EIS preparation. In this regard, we feel it should require its staff to begin preparing a statement immediately after completing a preliminary review of an application in those cases where appropriate. The Commission should also enter into written interagency agreements designed to expedite the necessary coordination on hydroelectric environmental impact statements.

CONCLUSIONS

In summary, the Commission needs to reform its technical analysis process, which can take well over 2 years to complete. In our opinion, this can be accomplished by

--imposing stricter controls over applicants' response time and staff review time to expedite the resolution of deficient applications,

--simplifying and clarifying applicant data requirements to (1) reduce filing deficiencies and errors and (2) minimize staff review time,

--requiring Commission staff to begin preparing environmental impact statements earlier, and

--improving coordination with other agencies on environmental impact statements.

RECOMMENDATIONS TO THE CHAIRMAN, FERC

To improve the quality of filings and minimize application deficiencies, we recommend that the Commission

--impose reasonable, but strict, deadlines on applicant response time to staff inquiries and on staff review time;

--use fines and reject incomplete applications to discourage unnecessary applicant delays in resolving deficiencies, when such action is in the public interest;

--discontinue the present practice of routinely accepting and processing incomplete or deficient filings;

--continue and expand efforts to simplify and clarify current application data requirements; and

--develop and use a centralized filing requirements source-book and conduct seminars for the education of industry and FERC staff regarding current Commission rules on filing requirements.

Also to expedite environmental reviews and the preparation of environmental impact statements, we recommend that the Commission

--require Commission staff to begin preparing such statements immediately after completion of its initial review of an application and

--intensify its efforts to enter into written interagency coordination agreements with cognizant agencies which establishes a reasonable time period for these agencies to comment on the environmental impact of hydroelectric projects.

CHAPTER 4

IMPROVEMENTS NEEDED IN THE HEARING PROCESS

During fiscal year 1978, the Commission's workload included close to 30,000 cases. Although substantially less than 1 percent (200 cases) went to hearing, these cases include about half of the Commission's most energy-critical cases--previously defined as those having a significant impact on the Nation's energy supplies and policy. Obviously, public interest warrants that these cases, in particular, be resolved as quickly as possible. However, they are not. Delays also commonly occur in these critical cases.

Currently, the hearings process typically takes about 2 years to complete. But, in some cases decided during fiscal year 1978, this process has taken more than 5 years. In this regard, we found that the principal contributors to unnecessary delays included

--inadequate incentives for ALJs to expedite the hearings process, resulting in (1) excessively liberal approval of time extensions; (2) the absence of necessary advance case preparation by ALJs, Commission staff, applicants, and intervenors; and (3) ineffective use of prehearing conferences as well as

--inadequate incentives for the Commission itself to expedite the hearings process, resulting in inordinate delays in its final decisionmaking on ALJ initial decisions, interlocutory appeals, and settlements.

CAUSE AND EXTENT OF DELAY DURING THE HEARING PROCESS

The hearing phase of the Commission's overall regulatory process resembles a civil court action in which testimony is taken and arguments are heard. Setting a case for hearing is usually initiated on the basis of a written recommendation to the Commission by its technical staff, although the Commission itself occasionally earmarks a case for hearing prior to technical review. This process continues until all parties reach a settlement or an ALJ reaches a decision. Each ALJ decision is then subjected to a lengthy review by the Commission's Office of Opinions and Reviews, composed of about 35 staff attorneys, to assure its compliance with current Commission policy prior to its referral for final Commission action.

However, in spite of the high public interest of these cases, our review of the Commission's records shows that this process can frequently take over 2 years to complete and is often replete with instances of unnecessary delay. Further, we are not the first to find the Commission's hearing process constrained by unnecessary delays. At least 11 other prior management studies in the past 4 years have also addressed the same problems. Four of these studies were conducted by FERC and its predecessor, FPC, two by the Congress; and five by us. (See complete listing of these studies in app. I.)

In addition, during the course of our review, at the request of a congressional subcommittee, we issued an interim report 1/ on the Commission's management of its ALJs which corroborated the extensiveness of time consumed during the hearing process. That report pointed out that wide variances in time can be consumed to complete various stages of the hearing process. Based on a sample of 22 ALJ initial decisions, that report pointed out that the time consumed for the total hearing process ranged from 112 to 1,300 days. The report also noted that the responsibility for the time consumed during various stages of the hearing process was not typically attributable to any one party or group. Applicants, intervenors, Commission staff, administrative law judges, and the Commission itself all consumed variable portions of time from one case to the next.

Our more recent examination of 59 ALJ initial decisions issued during fiscal year 1978 even further supported these findings. Our review showed the total hearing process ranged from 106 to 2,015 days. We also found that extensive time consumed during the hearing process was not typically attributable to any one party or group. However, the amount of time consumed was not always measurable. Measurable factors included those caused by time extensions, late interventions, interlocutory appeals, settlements, and final Commission review. Unmeasurable factors included those caused by delayed assignments of cases to ALJs, insufficient use of prehearing conferences, and lack of advance preparation by all parties to a hearing. Both measurable and unmeasurable factors will be discussed in this chapter. The following table shows the average processing time for major phases of the 59 cases we examined:

1/"Review of Administrative Law Judge Activities and the Hearing Process at the Federal Energy Regulatory Commission" (EMD-79-28, Feb. 13, 1979).

Average Time Consumed to Complete the Hearing Process for 59 Cases in Which ALJ Initial Decisions Were Issued During Fiscal Year 1978

	Average calendar days to complete
Prior to hearing	
Application filing date to hearing order date	184
Hearing stages	
Hearing order date to date ALJ assigned	103
ALJ assignment to 1st hearing date	247
Length of hearing	50
End of hearing to ALJ initial decision	223
Total hearing process	
Total days from hearing order to ALJ initial decision	623

The Commission reported that for fiscal year 1979, the actual average processing time for hearing cases was about 540 days.

TIME EXTENSIONS AND POSTPONEMENTS ARE TOO LIBERAL

A frequent and major factor of time consumption we found constraining the hearing process is ALJ's liberal approval of time extensions. Currently, any party participating in a hearing proceeding may request that the presiding ALJ grant an extension or a recess for a good cause. For example, an applicant's attorney may file a motion stating that he or she needs an additional 2 weeks to prepare an initial brief. During the course of a proceeding, such extensions can account for as much as 9 months of delay during the typical hearings process. In this regard, some ALJs presently feel compelled to approve even "last minute" requests for time extensions in the absence of objection by any parties to the proceeding because they want to prevent even the appearance of denying due process. Commission rules, however, clearly state that these last minute requests must be denied unless the party can show reasonable grounds for why he or she failed to act earlier.

Prior studies of the hearing process have also identified liberal approval of time extensions as a major cause of unnecessary delay. In this regard our 1976 GAO report 1/ suggested that the Office of ALJs evaluate requests for extensions more critically and grant them only in exceptional cases. Even the Commission Chairman, at that time, agreed with this recommendation. In fact, he stated that all requestors of time extensions, including staff, would thereafter have to demonstrate an exceptional need to delay further proceedings. However, our subsequent report issued in February 1979 noted that time extensions to all parties, including staff, are still frequently granted. The report stated that, based on a detailed review of 11 lengthy ALJ decisions issued in fiscal year 1978, out of 149 time extentions requested by staff, intervenors, applicants, and other parties, 139 were approved. In addition, these extensions accounted for as much as half of the total hearing processing time in many of the cases.

An April 1979 Commission Hearing Process Status Report also points out that a goal timeframe for the total hearings process was 9.6 months at that time. Recently, however, this goal was revised upward to a range of 9.7 to 15.6 months. Further, the Commission reported that the actual average processing time for hearing cases for fiscal year 1979 was 17.8 months. Based on our findings, we believe that liberal approval of extensions accounted for much of the additional time needed.

To make matters even worse, however, we found numerous instances of excessively liberal approval of time extensions even when violation of Commission rules was necessary. According to current Commission Rules (18 C.F.R. 1.13), motions for time extensions should be made prior to the expiration of four-fifths of the time previously prescribed in procedural dates set by the Commission or the ALJ (18 C.F.R. 1.13(d)). If adhered to, this rule would prevent "last minute" requests

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1/"Management Improvements Needed in the Federal Power Commission's Processing of Electric Rate Increase Cases" (EMD-76-9, Sept. 7, 1976).

to extend previously established deadlines. Yet, of 11 cases we recently examined, we found 6 instances in 4 cases where the four-fifths rule was violated. Further, they were allowed by the ALJ in charge in all instances but one.

Two of the ALJs we contacted indicated that in the interest of due process, and in the absence of any objection by interested parties, this rule was often ignored. In addition, the Chief ALJ and other FERC officials pointed out that such extensions can occasionally have positive effects in reducing overall hearing processing time. For example, extensions allowed for settlement, preparation of staff position statements, and necessary discovery may result in significant reductions in overall hearing processing time. However, we found numerous instances in the 11 hearings cases we examined (1) where what we believe are excessive amounts of time were being allowed for settlements, staff preparation of position statements, and attorney preparation of testimony and (2) where schedule conflicts were being too easily accommodated.

Clearly, in spite of many prior study recommendations to the contrary, ALJs continue to be excessively liberal in granting time extensions. Such extensions contribute to considerable delay in the hearing process and prevent the Commission from meeting established target dates on even its most critical cases. Therefore, we believe that ALJs should more critically evaluate requests for time extensions, particularly those which violate the four-fifths rule, and grant them only in exceptional circumstances in accordance with specific criteria to be established by the Commission and set forth in its rules of practice (18 C.F.R.). The Commission's Chief ALJ, after reviewing our draft report, stated that he has continually requested ALJs to more critically evaluate such requests.

ALJs NEED TO BE ASSIGNED EARLIER

Another principal cause of unnecessary delay during the hearing process has been the delayed assignment of cases to ALJs. During fiscal year 1978, these assignments were frequently made about a week before a hearing was to begin to afford the Chief ALJ some flexibility in assigning cases on the basis of ALJ caseload and availability. However, this affords the ALJ little time to prepare for involved cases or to develop a total scheme for expediting the hearing process. Other parties to the case, on the other hand, have what would appear to be more than ample time for preparation.

Although the amount of hearing delay resulting from late case assignment cannot be quantified, such delays were extensive during fiscal year 1978. In fact, for 59 cases involving decisions during this period, we found that an average of 103 days elapsed from the date a case was ordered to hearing to the date an ALJ was assigned. In five of the cases, the time elapsed was over a year. More recently, however, under the direction of a new Chief ALJ, we found that most such assignments were being made much earlier.

According to the Commission, assignments during fiscal year 1978 were delayed because of many factors which influence the timing of an assignment. Then, as well as now, the Chief ALJ selects who will preside at the hearing. Factors influencing this choice include (1) the nature and complexity of the case, (2) the degree of urgency for its completion, and (3) the caseload of the ALJ. For maximum flexibility in evaluating these factors, the former Chief ALJ preferred to delay the assignment until the last possible moment. Further, although this practice has been changed substantially under the direction of the new Chief ALJ appointed in July 1979, the practice of earlier assignment needs to be expanded to include all cases. Continued delays in ALJ case assignment minimizes ALJs' control over the direction of the hearings process and their ability to expedite proceedings. It also significantly reduces the opportunities for effective use of prehearing techniques, because ALJs are not able to fully review the case prior to the hearings.

Under the current Commission rules (18. C.F.R. 1.1, et seq.). ALJs have broad sweeping powers with which to control most of the time consumed during the hearing process. They have the authority to limit cross-examination by intervenors, limit the number of expert witnesses, and require advance distribution of proposed exhibits and prepared testimony. They may also limit the tactical disputes of counsel and prevent "fishing expeditions" and repetitive cross-examination.

We believe that the assignment of ALJs needs to be set closer to the dates when cases are originally set for hearing. This would allow the ALJs more time to prepare for involved cases and develop a total scheme for the hearing process, as well as maximize their control over the time consumed during hearings. Because the newly appointed Chief ALJ is now assigning these cases earlier, we have chosen not to include this proposal as a recommendation.

In commenting on this proposal, the Chief ALJ stated that although he has been making earlier case assignments, it has not resulted in any appreciable increase in ALJ productivity or preparedness. However to expedite this report, we decided not to take the additional time to verify the accuracy of this statement.

PREHEARING CONFERENCES ARE NOT ALWAYS USED EFFECTIVELY

Intended to simplify and expedite proceedings, prehearing conferences have also posed a problem. Their function is to provide participants an opportunity to exchange views in the presence of an administrative law judge, isolate the major issues, limit witnesses and cross-examination, reach agreement on a procedural schedule, and encourage settlement as an alternative to hearings. However, while the Commission fully recognizes the value of prehearing conferences and appears to encourage their use, such conferences are not always held. Further, even when they are held, they are often ineffective, because

--ALJs are frequently unable to prepare for them in advance;

--FERC staff and other parties to the hearing fail to advance their positions at this stage;

--discovery requests (those instances where a party in hearing requests information beyond that which the Commission routinely requires) are frequently not resolved expeditiously and are routinely allowed to delay proceedings well after the initial prehearing conference; and

--extended settlement discussions are allowed, in some cases, to add as much as 2 years of delay to completion of the prehearing conference.

The consequences of each of these four problems can be significant. The late assignment of ALJs to cases reduces their advance preparation time, thereby reducing the effectiveness of prehearing conferences.

Second, the possible issues that might be raised at the prehearing conference with respect to a gas or electric utility's case can be voluminous. As a result, FERC staff, applicants, and intervenors are frequently reluctant to reveal their positions or even agree on what the major issues are until Commission staff has at least completed its cross-examination of the applicants' witnesses. This in turn has resulted in rendering the objectives of most prehearing conferences futile.

Third, although it is widely recognized that resolution of all discovery requests during the prehearing conference can significantly expedite the subsequent steps in the hearing process, such requests are frequently not made until well after such conference and they, therefore, may not be expeditiously resolved. This can significantly delay further proceedings. In fact, in 3 of 11 cases we sampled, discovery consumed more than a year.

Fourth, we found that in the absence of complete ALJ control, the duration of settlement negotiations can, in some instances, add as much as a year of delay to completion of the prehearing conference when the parties to the settlement cannot reach agreement. In this regard, the Chief ALJ suggested that it would be good practice for ALJs to routinely establish subsequent prehearing conference dates. All parties to the settlement would periodically meet on these dates with the ALJs to discuss progress and problems in negotiations. Also, in a January 1980 report to the Congress, the Commission's Chairman supported a similar approach. However, no formal policy or directives have been issued by the Commission in this regard.

Few observers deny the potential benefit of prehearing conferences. Responding to a Commission request for comment on the regulatory procedures, the Federal Energy Bar Association said: "The Administrative Law Judge has a powerful set of tools for expedition including the judicious use of pretrial procedures and he should be strongly encouraged by the Commission to use those tools." The former Chief ALJ also said that he believes prehearing conferences are useful. However, he cautions that if they are to be effective, all parties must prepare and submit evidence in advance. The Federal Energy Bar Association and the American Petroleum Institute both agree. Clearly then, prehearing conferences are an excellent means for enhancing advance preparation.

In addition, applicants, intervenors, FERC staff, and other parties to a proceeding should be required by the ALJ to at least agree on what the major issues are and their positions on them and be prepared to discuss them at the prehearing conferences to expedite further proceedings as well as the "discovery" of additional data. There is also a clear need for the Chief ALJ to instruct all ALJs to resolve discovery requests as early as possible, preferably prior to the first prehearing conference, and establish strict deadlines for submitting discovery data. Further, when the ALJs allow parties time for discussing settlement prior to or during the prehearing conference, a definite date should be set for when the parties must meet again with the ALJ to inform him or her on the progress of negotiations.

FERC's Chief ALJ apparently agrees. After reviewing our draft report, he said he sent a memorandum on March 12, 1980, to all ALJs instructing them to require all parties to agree on major issues at the first prehearing conference.

ISSUES SHOULD BE IDENTIFIED EARLIER

In the absence of specific requirements under existing Commission rules or DOE legislation, FERC staff, applicants, and intervenors are not required to prepare in advance of a hearing. Inadequate advance preparation has resulted in increasing the difficulty of isolating key and uncontested issues early, thus unnecessarily lengthening discovery and settlement negotiations, and significantly limiting the usefulness of prehearing conferences.

Most Commission officials agree that statements of issues and position should appear early in a hearing to help guide the presentation of testimony and argument. As we pointed out earlier, the number of issues that may be raised with respect to a particular gas or electric utility's case can be voluminous. Therefore, in the absence of any real incentives such as ALJ directives or Commission rules, FERC staff, applicants, and intervenors are frequently reluctant to reveal their position or even agree on what the major issues are until Commission staff has at least completed its cross-examination of the applicants' witnesses.

However, present Commission rules do not require complete statements of issues and position at the prehearing conference or even at the beginning of formal hearing. In fact, under present Commission rules and the DOE Act of 1978 (Sec. 405), the applicant, intervenor, Secretary of Energy, as well as State commissions can delay hearings by simply petitioning to intervene at any time during the course of a hearing without informing any other parties to the case of their position or even identifying the key issues.

In addition, most ALJs do not require the early submission of position statements by parties to the proceedings, nor do they require these parties to at least agree on what the major issues are. As a result, administrative law judges, Commission attorneys, and numerous industry and public officials alike have noted that these statements frequently show up late in the hearing process.

It is, however, generally agreed that without at least a solidification of the issues and positions prior to commencement of hearings, research on the part of the ALJ is unnecessarily compounded, the potential for settlement is reduced, and the initial discovery period, as well as the overall hearing process, unnecessarily extended.

To resolve these problems, we believe three separate measures need to be taken. First, all parties to the proceeding should be required by the ALJ to at least agree on what the major issues are at the prehearing conference or prior to the commencement of formal hearings. Second, FERC rules of practice and procedure should be revised to require all parties to a proceeding, including FERC staff, to file complete statements of issues and position prior to the commencement of hearings, preferably at the prehearing conference. Third, FERC rules should be revised to require that clear statements of issues and positions be submitted at the close of the hearing process, as is currently required by one FERC administrative law judge, to facilitate ALJ decisionmaking. At least one FERC ALJ requires that closing briefs be prepared as cited in our third measure above. Also, according to the Chief ALJ, the second and third measures are currently "under consideration" by the Commission's year-old Advisory Committee on the Rules of Practice and Procedure.

NEED FOR STRICTER ADHERENCE TO RULES ON INTERLOCUTORY APPEALS

Under Commission rules (18 C.F.R. 1.28(a) and (c)), an interlocutory appeal is a process by which any party to a proceeding protests an ALJ's ruling to the Commission. Such appeals are limited to extraordinary circumstances and require final Commission decisions within 30 days to prevent any detriment to the public interest. ALJs are responsible for evaluating whether the circumstances of the appeal are extraordinary and necessitate referral to the Commission for review. To avoid the appearance of denying due process, such appeals are almost routinely referred to the Commission for review.

Much unnecessary delay is, however, caused by excessively slow Commission action on interlocutory appeals on ALJ rulings. Although Commission rules require it to act on such appeals within 30 days, we found some instances where cases had been pending final Commission action for well over a year.

Normally, few such appeals are made on a case. However, in some instances, hearings have been significantly delayed because of these appeals, some well beyond the 30-day limit imposed under current Commission rules. For example, we found that, as of April 1, 1979, eight interlocutory appeals had been pending Commission decision an average of 182 days.

In fact, three of these had been pending for 264, 395, and 578 days.

During our review, we also found other instances of even more extensive delays being caused by appeals. In one such instance, an ALJ had certified an appeal on September 15, 1977. The Commission issued its Notice of Intent to Act on September 15, 1977, and stated the 30-day action rule would be waived on this appeal. However, as of December 1, 1979, over 2 years later, the Commission had still not acted on this matter.

Slow action on appeals appears to be partially attributable to a Commission rule requirement that, despite their already heavy caseload, all five Commissioners review appeals. In responding to this problem over a year ago, the Commission staff proposed a new rule on interlocutory appeals, whereby the Chairman would appoint a single Commissioner to review appeals instead of having the full Commission do so. The proposed rule also limits the volume of appeals subject to review by establishing stricter criteria under which such review would be appropriate. However, there has been no Commission action on this proposal to date.

In commenting on this proposal, the Chief ALJ stated that based on his experience, appeals "consistently cause delay in the final disposition of a proceeding, sometimes for months, often for years." As such, he does not oppose having a single commissioner review appeals. He did, however, dispute the idea of the Commission's establishing stricter criteria under which appeals might be reviewed. He thought that if such criteria were established, an applicant's attorney would "couch his request for certification in terms necessary to meet the requirements of the proposed rule." Consequently, nebulous appeals might actually increase; he therefore felt that such appeals should be discouraged. Further, he thought this problem was already adequately addressed under existing Commission rules which require a prompt decision to prevent detriment to the public interest.

While the controversy continues on how to expedite Commission action on appeals, however, they continue to be a roadblock to speedy hearings. Clearly then, the Commission should, at a minimum, more strictly adhere to its own rules on interlocutory appeals. As set forth in 18 C.F.R. 1.28, strict enforcement of these rules allows exceptions to the Commission's automatic denial of appeals within 30 days only under the most extraordinary circumstances. In addition, the Commission should at least begin now, on an experimental basis, to delegate the review of interlocutory appeals to a single Commissioner to expedite the hearing process.

FERC's Chief ALJ said that new rules, consistent with our proposal, have been approved in principle and, when issued, should be a vast improvement over current procedures.

REVISED PROCEDURES ARE NEEDED TO ASSURE THAT EXPEDITED SETTLEMENTS CONTINUE

Although settlements often offer a means of avoiding lengthy hearings, the Commission has taken an excessively long time, sometimes over 3 years, to approve them. To correct this problem, the Commission recently adopted a policy by which the staff is to adhere to deadlines on certain procedural steps in the review of proposed settlements. This has greatly helped expedite settlements. However, stronger procedures are needed to assure that timely action continues. Specifically, the following weaknesses exist:

--Staff compliance with the Commission's new policy is voluntary not mandatory.

--The Commission places no overall deadline on how long it will take to consider settlements.

--ALJs, who are the most familiar with settlement cases, rarely comment to the Commission on the fairness and public interest of proposed settlements, although such a practice would clearly expedite and enhance reasoned decisionmaking by the Commission.

According to Commission rules, conferences between the parties for the purpose of settlement may be held at any time before or during a hearing (18 C.F.R. 1.18). An ALJ may also, with or without a request from the parties, direct that a settlement conference be held to resolve either all matters in dispute or any of several issues. Subsequently, the ALJ ceases to participate and hearings normally are suspended. Then, if the parties reach settlement on even part of the case, hearings continue only on the unresolved portions. Only if negotiations fail entirely, does the full hearing resume.

Negotiations are, however, often successful, and considerable time has been saved through the encouragement of settlements. In this regard, we found that parties have reached settlement in over 50 percent of 113 cases completed between January 1 and November 1, 1978. Further, according to a recent study by the Administrative Conference of the United States, most settlements occur during the first 50 days of hearings.

Our analysis of 77 electric and gas hearings cases resolved by Commission order during 1978, as summarized in the following table, shows that settlement cases take significantly less time to process than others.

	Hearing cases resolved without settlement		Hearing cases resolved through settlement	
Type of case	Number of cases sampled	Total days	Number of cases sampled	Total days
Electric rate	29	694	31	364
Gas pipeline rate	4	645	13	278

However, until recently, despite the Commission's obvious success with settlements, much of the time saved was frequently lost because the Commission took so long to approve them. In fact, our examination of Commission records on settlements pending approval as of April 20, 1979, showed that some settlements wait as long as 3 to 4 years for final Commission approval.

The only explanation Commission officials offered for such inordinate delays was the complexity and controversial nature of such cases. In addition, several ALJs told us that, although they have always encouraged settlements, the Commission has failed to take sufficient actions toward significantly reducing its lengthy review time.

In responding to recommendations in our prior GAO report to the Congress (FPCD 78-25, May 15, 1978), the Commission said that it intended to place a high priority on "uncontested" settlements. Uncontested settlements are those in which all parties to a proceeding, including intervenors, agree. Quick Commission action on such cases would appear easily manageable. However, even these cases are plagued with unnecessary delays. For example, we found that, of 54 uncontested settlements pending Commission action as of April 20, 1979, 10 had been pending more than 6 months, 6 for more than a year, and 2 for more than 2 years.

The following table summarizes our findings for these 54 uncontested settlements as well as the 17 contested settlements pending Commission action as of April 20, 1979.

Age of uncontested settlements

No. of months pending	No. of cases
0 to 5	36
6 to 11	10
12 to 23	6
24 to 35	0
36 to 48	2
Total	54

Age of contested settlements

No. of months pending	No. of cases
0 to 5	4
6 to 11	4
12 to 23	6
24 to 35	2
36 to 48	0
Over 48	a/ 1
Total	17

a/This case was found to be 71 months old.

In an effort to reduce unnecessary decisionmaking delays in both types of settlements, the Commission adopted a new policy on June 15, 1979, which imposed deadlines on certain procedural steps in the review of settlements. It provides that comments on, or objections to, settlements must be filed within 20 days after an offer of settlement and that opposition comments must be filed within the next 10 days. In addition, the Commission Chairman directed FERC staff to "attempt" to schedule uncontested settlements on the Commission agenda within this same 30-day limit and contested settlements within 60 days. However, compliance with this directive is presently voluntary.

A Commission official also told us that along with this new policy on settlements, there were oral instructions to staff to expedite pending settlements. As a result, on December 1, 1979, Commission records showed 41 pending settlements, only 3 of which were over 6 months old and none over a year old. However, while this represents a very substantial improvement over the number of cases pending in April 1979, we remain concerned that this improvement may be only temporary, because these cases had been singled out for one-time, special, top-priority treatment. In fact, in a recent report on delays in processing electric rate increase applications, while the Commission's Chairman notes excellent results with this method, he also admits that "no such intensive drive can be sustained on a continuing basis without damage to the Commission's other work."

Therefore, we believe that certain additions to the written policy statement remain necessary to expedite settlements. More specifically, we believe a critical need still exists for the Commission to impose a reasonable deadline on its own final decisionmaking action, particularly when settlement offers are uncontested. In addition, the Commission should require mandatory, rather than voluntary, compliance with the Chairman's directive to Commission staff that uncontested settlements be scheduled on the agenda within 30 days after the settlement offer.

Such improvements alone, however, will not reduce unnecessary delays in processing settlements to reasonable levels. Still another problem, is the need for the ALJ who is most familiar with the substantive issues of a settlement to provide position statements to the Commission on the fairness and public interest of a settlement prior to its referral to the Commission for approval. Clearly, this would enhance as well as expedite reasoned decisionmaking on the part of the Commission. Presently, ALJs are not required to do so and most rarely do. Subsequently, the Commission itself, though unfamiliar with the settlement case, must conduct a duplicative and often lengthy review to evaluate the fairness and public interest of all settlement proposals.

SUPPLEMENTS TO ALJ INITIAL DECISIONS NECESSARY TO EXPEDITE SUBSEQUENT REVIEW

Presently, every ALJ initial decision is subject to a review by the Office of Opinion and Review (OOR) to assure compliance with current Commission policy. This review, however, is frequently subject to inordinate delays because it is usually necessary to re-research ALJ decisions that are inadequately referenced, organized, and summarized. OOR review currently takes an average of 1 year to complete, adding that much more time to the final disposition of an ALJ decision. Yet despite lengthy delays, there is little indication the Commission is considering limiting the number of decisions subject to this review. In this regard, on January 27, 1978, the Chairman issued a memo stating that even in the absence of any opposition to an ALJ's initial decision, all ALJ decisions would continue to be reviewed by OOR.

However, even in the absence of any Commission action to limit the number of ALJ decisions subject to OOR review, there are other improvements that can be made under existing procedures to reduce unnecessary workload burdens on OOR staff and resultant delays. In this regard, OOR's Deputy Director suggested to us that ALJs might expedite and simplify OOR review by including a brief summary of specific findings of fact and conclusions of law in all their decisions. He also stated it would be helpful if most decisions were better referenced and organized.

There is much support for these suggestions. To begin with, the Commission's own rules (18 C.F.R. 1.30 (g)) state that all Commission decisions (including those of OOR and the Commission's ALJs) should at least include a statement of findings and conclusions as well as the reasons or bases for these decisions. Yet, our recent examination of 22 ALJ initial decisions issued over the last 6 months of fiscal year 1978 showed that many were inadequately summarized, organized, and referenced. Touche Ross also found similar problems in a management study performed under contract for the Commission. 1/

ALJs could expedite the organization, referencing, and summarization of their decisions by requiring all parties to file closing briefs (prior to ALJ decisions) which comply with the Commission's Rules of Practice and Procedure (C.F.R. 1.29 (c) and C.F.R. 1.31 (b)), however, many do not.

These rules state that "closing briefs" should contain:

> "(1) a concise statement of the case, (2) an abstract of the evidence relied upon by the party filing, preferably assembled by subjects, with references to the pages of the record of exhibits where the evidence appears, and (3) proposed findings and conclusions * * *."

Contrary to the beliefs of the Deputy Director of OOR however, the Chief ALJ does not feel that OOR summaries are necessary for all ALJ decisions. Instead, he feels that the present practice of placing a brief conclusion in the last (ordering) paragraph is sufficient. In addition, he does not believe that all ALJ decisions should include more frequent transcript citations. He stated that, occasionally, such decisions are based on the meaning of the entire record.

1/"The Federal Power Commission's Workload Management System," Touche Ross, October 1977.

It remains clear to us, however, that because ALJ decisions are not solely reviewed by OOR (but also by the Commission and occasionally by the U.S. Court of Appeals and U.S. Supreme Court), certain supplements to ALJ decisions would certainly help to expedite subsequent review. Therefore, ALJs should be required to more adequately reference, organize, and summarize their decisions. To expedite this process, ALJs should more strictly enforce their existing rules on closing briefs by all parties to the hearing.

LACK OF ADEQUATE ADMINISTRATIVE LAW JUDGE PERFORMANCE INCENTIVES

As a general rule, when ALJs are assigned a case, they are given almost complete control of the proceedings, including the time element. This control continues until they issue their initial decision. ALJ performance, however, is never subject to any type of evaluation. Moreover, the Commission has never established performance standards. Instead, according to the Commission's Chief ALJ, ALJs are left to manage their own cases, subject only to their own sense of professionalism, peer pressure, and informal suggestions by the Chief Judge. Consequently, ALJs are provided no external incentive to expedite the hearings process.

In this regard, the Commission's control over its ALJs is also limited by the Administrative Procedures Act. This act seeks to insure the independence and objectivity of ALJs who now serve 28 Federal agencies. However, the act also precludes agencies from controlling ALJ performance. As such, it assigns responsibility for defining qualifications, compensation, and tenure to the Office of Personnel Management (OPM), formerly the Civil Service Commission, but does not provide for evaluating ALJ performance by OPM or any other organization.

OPM has, in turn, been reluctant to perform its management responsibility, viz., issuing ALJ performance measurement guidelines to agencies and then evaluating agencies' systems for compliance. Consequently, OPM has provided little assistance to agencies, such as FERC, in resolving ALJ personnel management problems, should they arise.

In the meantime, in the absence of any type of performance standards, the Commission publishes information on ALJ productivity in a monthly Hearing Process Status Report. Although the report does not reflect a system of weighing the complexity of cases, it does provide critical information on the progress of each case pending and managerial accountability by naming the ALJ in charge. It also shows: (1) elapsed time for each stage of the proceeding, (2) problems encountered in the disposing of a case, (3) expected and actual time consumed, and (4) the status of all cases pending before and completed by ALJs. However, Commission officials and the Chief ALJ said they cannot use this management tool to fully evaluate ALJ performance because, in the absence of performance standards, there are too many variations among cases including the type, number, complexity, and scope of issues involved, and the number of contesting parties.

Other Federal regulatory agencies, however, have been able to measure ALJ performance in spite of variations in the complexity of their cases. For example, the National Labor Relations Board established a standard that each administrative law judge must issue at least 12 decisions on cases of average size and complexity each fiscal year. The Occupational Safety and Health Review Commisson has also set up similar standards. The Chief ALJs at both of these agencies noted that while the complexity of cases might vary widely, the policy of rotating assignments--as set forth in the Administrative Procedures Act--tends to equalize judges' workload with respect to complexity over a period of time.

However, even if the Commission were to develop equitable standards, FERC's Chief Judge maintains that the Commission would never use these standards to evaluate ALJ performance because of serious doubts regarding its administrative and legal authority to do so. One administrative law judge also thought that such standards would be useful for evaluating ALJs only if parties outside the agency applied them to avoid compromising an ALJ's independence and eliminate any political pressure.

In this regard, two of our prior reports 1/ recommended that the Commission's Chief ALJ and the Chief ALJs of 27 other Federal agencies develop such standards. That report also suggested that these standards take into consideration the variations in case types and ALJ workload. The report also recommended that the Congress provide for evaluation of ALJs by an organization other than the employing agency to insure objectivity and equitable treatment and protect the ALJ's independence. To date, however, these recommendations have not been acted upon.

1/"Administrative Law Process: Better Management Is Needed" (FPCD-78-25, May 15, 1978) and "Management Improvements in the Administrative Law Process: Much Remains to be Done" (FPCD-79-44, May 23, 1979).

Four key regulatory reform bills currently in the Congress--Senate bills S.755, S.262, S.1291, and S.2147--clearly support our recommendation for ALJ evaluation by an "outside" agency. Senate bills S.755 and S.2147 would have the Administrative Conference of the United States evaluate ALJs. The other two bills, S.262 and S.1291, would split the task between the Administrative Conference and the Office of Personnel Management. However, legislative proposals similar to those contained in these four bills have been under consideration since early 1978.

It is generally agreed that something should be done with respect to administrative law judge performance evaluation. However, there is little agreement on what needs to be done and much uncertainty regarding the Commission's legal authority to act on this matter. In the meantime, we believe the lack of adequate ALJ incentives to expedite the hearings continues to contribute to unnecessary delays. In the absence of ALJ performance standards, we believe the Chief ALJ should at least use what limited performance information he has available to aid in case assignments, periodically consult ALJs on their performance, and make recommendations to OPM on any need for disciplinary action. Further, we recommend that the Congress require regulatory agencies such as the Commission to develop ALJ performance standards as well as provide for formal ALJ evaluations by an outside agency to insure objectivity and equitable treatment and protect the ALJ's independence. As such, we clearly support these provisions in current legislative proposals.

CONCLUSIONS

Close to half of the Commission's most energy-critical cases go to hearing. We believe public interest warrants that these cases be resolved as quickly as possible. However, due to a variety of problems, delays are no less common in these cases than in others. Although some corrective actions have been taken by the Commission, such as the implementation of new procedures to expedite settlements, they are not sufficient to expedite cases in hearing. Needed improvements include

--increasing the use and effectiveness of prehearing conferences;

--less liberal approval of time extensions, late interventions, and interlocutory appeals;

--increased preparedness on the part of the staff, applicant, and intervenor;

- --prompt Commission action on uncontested settlements; and

- --more timely reviews of ALJ decisions by the Office of Opinions and Review, and increased incentives for ALJs to expedite the hearings process.

RECOMMENDATIONS TO THE CHAIRMAN, FERC

We recommend that the Commission direct its Chief Administrative Law Judge to encourage more active exercise of ALJ controls over unnecessary delays during the hearing process by

- --urging that all administrative law judges more critically evaluate requests for time extensions, particularly those which violate the Commission's four-fifths rule, and grant them only in the most exceptional circumstances, in accordance with specific criteria established by the Commission and set forth in its rules of practice (18 C.F.R.);

- --urging that ALJs resolve discovery requests as early as possible, preferably at the prehearing conference, and to establish strict deadlines for submission of discovery data and completion of settlement negotiations;

- --urging that all ALJs require all parties to a proceeding to at least agree on what the major issues are at the prehearing conference or prior to the commencement of formal hearings;

- --requesting that ALJs include in their initial decisions a brief summary of (1) specific findings of fact and conclusions of law and (2) more frequent transcript citations to expedite subsequent review of ALJ decisions; and

- --using the Commission's monthly hearing status report to aid in (1) assigning cases, (2) consulting ALJS on their performance, and (3) making recommendations to OPM on the need for disciplinary action.

We also recommend that the Commission itself take the following procedural measures to expedite the processing of cases through hearings:

--Revise current rules of practice and procedure to require applicants, staff, intervenors, and all other parties to a proceeding to file statements of issues and position prior to the commencement of hearings, preferably at the prehearing conference and also at the close of hearings.

--More strictly adhere to its own rules on interlocutory appeals, by allowing exceptions to the Commission's automatic denial of these appeals only in the most extraordinary circumstances. In addition, the Commission should seriously consider whether it can delegate the review of interlocutory appeals to a single Commissioner to expedite the hearing process.

--Urge ALJs to review all settlements and provide the Commission with position statements on the fairness and public interest of these settlements to expedite and enhance reasoned Commission decisionmaking.

--Impose reasonable deadlines on final Commission action on all settlements, particularly uncontested ones.

--Establish a mandatory rather than voluntary rule that Commission staff schedule uncontested settlements on the agenda within 30 days after the settlement offer.

RECOMMENDATIONS TO THE CONGRESS

In addition, to increase incentives for ALJs to expedite the hearings process, we continue to recommend that the Congress

--require regulatory agencies such as the Commission to develop ALJ performance standards and

--assign the responsibility for periodic evaluation of ALJ performance to an organization other than the employing agency such as the Office of Personnel Management or the Administrative Conference of the United States.

CHAPTER 5

IMPROVEMENTS NEEDED IN COMMISSION DECISIONMAKING

Commission decisionmaking is the final phase of the caseload management process and can represent one-half to threefourths of total case processing time. This phase begins with the completion of technical analysis and memo preparation for nonhearing cases or the issuance of an ALJ's initial decision in hearing cases. It ends with the issuance of the Commission's final decision. This phase also includes completion of an intermediate review by the Commission's legal staff before scheduling the case on the Commission's agenda for final decision. It can also include the rehearing of a "final" Commission decision. Although, for many of the Commission's cases, this phase of the decisionmaking process has been completed in less than 30 days, we found cases being subjected to unnecessary delays amounting to well over a year, due to significant procedural problems. These problems include

--inefficient intermediate legal review procedures for both hearing and nonhearing cases due to

(1) ineffective coordination between the Commission's legal and technical staff,

(2) the need for improvements in the timeliness of the OOR review process, and

(3) the absence of centralized legal reference material to speed legal research;

--inadequate managerial accountability for cases pending final Commission action or cases pending its reconsideration due to

(1) incomplete and unreliable program branch recordkeeping on cases pending completion of Office of the General Counsel (OGC) review and final Commission decision and

(2) the absence of reasonable, but strict, time limits on Commission action in old cases pending rehearing; and

--significant limitations on the Commission's ability to expedite consideration of even its highest priority energy decisions because of insufficient delegations of authority.

IMPROVEMENTS NEEDED IN THE LEGAL REVIEW OF NONHEARING AND HEARING CASES

Review of nonhearing cases

The Commission's Office of the General Counsel is responsible for legal review of all technical staff recommendations to the Commission on nonhearing cases prior to their referral for final decisionmaking. On the basis of this review, OGC normally drafts a proposed Commission order. It then circulates this draft order among Commission staff for comment, makes necessary revisions, and forwards the revised draft to the Office of the Secretary for scheduling on the next Commission meeting for final decision. This review process has often been accomplished within 30 days. However, according to Commission case records and OGC officials, frequent problems which can substantially delay this review include: (1) inadequate written input from Commission staff performing initial technical review (i.e., Office of Electric Power Regulation and Office of Producer and Pipeline Regulation) and (2) ineffective coordination between OGC and the heads of the Commission's technical offices on the form, content, and support of technical staff input to OGC.

Incomplete and decentralized Commission recordkeeping on completion dates for Office of the General Counsel draft orders made it difficult for us (as well as the Commission) to effectively evaluate the efficiency of OGC's legal review for all nonhearing cases. However, we were able to compile a list of draft orders issued during fiscal year 1978 for 522 hydroelectric and natural gas pipeline certificate cases. As such, we found that this legal review process can often substantially exceed what the Commission considers an achievable goal time. In fact, in seven of the cases we examined, this legal review process took more than a year to complete. The following table summarizes our findings.

	Average standard goal timeframe	Total No. of	Time required to complete OGC legal review (days)					
Type of case	in days	cases	1-15	16-30	30-60	60-90	90-120	Over 120
Hydroelectric license	30	124	20	19	22	23	6	a/34
Gas pipeline certificate	15	398	86	226	47	17	6	b/16

a/This total includes three cases that are more than a year old.

b/This total includes four cases that are more than a year old.

As the table shows, legal review time for nonhearing cases frequently exceeds the 15- and 30-day goals. When we discussed this point with OGC officials, they stated that the achievability of such goal times was enhanced by the informal working relationship between the Commissioners, technical staff, and OGC. In addition, FERC officials recently informed us that all individual office heads have recently begun to conduct periodic meetings to discuss their mutual concerns. However, FERC officials also pointed out that in spite of the positive impact of this informal working relationship and periodic meetings between office heads, unnecessary delays and case backlogs continue. In this regard, the reason most frequently mentioned for the bottleneck was because the summary memorandum sent by technical staff to OGC did not adequately (1) identify key issues and (2) support technical staff recommendations. Therefore, it is generally agreed that additional management initiatives in this area are needed to reduce the time it currently takes for OGC to complete its legal review process.

In addition, the officials we contacted thought that the preparation of technical memos in the form of proposed draft Commission orders might speed office review. Some also complained about a need for a centralized source for researching Commission policy and legal precedents which have become particularly critical to expediting legal research by the Commission's less experienced attorneys.

A 1976 Touche Ross management study performed under contract for the Federal Power Commission also noted many of these same problems.

Consequently, we believe the heads of OGC and the technical staff offices should meet periodically to resolve their mutual concerns and establish rigid constraints on the format, content, and support of technical staff input to OGC. The Commission should also consider requiring that technical staff memos be prepared in the form of draft orders to expedite the OGC review process. In addition, OGC should improve its recordkeeping system to aid the Commission in isolating problem areas and in subsequent decisionmaking. This information should also be submitted monthly to the management information system, as is presently required of most other program offices within the Commission.

Review of hearing cases

Under current Commission policy, the Office of Opinions and Reviews must review all administrative law judge initial decisions for compliance with Commission policy. The OOR attorney then prepares both a summary of key issues and a draft order containing his opinion on each case, and sends these along with the ALJ decision to the Commission for final decision. OOR thus provides valuable assistance to the five Commissioners. However, we found that this process can frequently take over a year to complete, adding that much more time to a case that may have already taken 2 or more years in hearing. These delays were primarily attributable to

--the need for improvements in the timeliness of the OOR review process and

--the need for improved coordination between OOR and the Commission's technical staff offices and the Office of ALJs.

Admittedly, OOR does play a key role in condensing bulky materials emerging from the hearing process into a form which the Commission can easily review. According to an OOR official, this stage of the review process is particularly critical because about one-third of ALJ initial decisions are overturned by the Commission on the basis of OOR's draft order opinions. He attributed these reversals primarily to the difference in roles between OOR and the ALJs. In this regard, the ALJ, whose independence is established under the Administrative Procedures Act, reviews each case separately on the basis of its own merits and controlling legal precedents. On the other hand, OOR reviews each decision for compliance and consistency with current Commission policy and "thinking."

The OOR review process, however, has proven to be inordinately lengthy. According to a December 1979 Commission internal management report, draft order preparation by OOR frequently exceeds the Commission's "goal" timeframe of 167 days. The report also states that the OOR post-hearing process (from ALJ initial decision to final order) is currently averaging about 329 days. Similarly, our own review of 48 initial decisions, completed during the last half of 1978, showed an average of 317 days to complete this process.

An OOR official at one time believed it possible to shorten the present review of initial decisions to 90 days, but said the volume of cases has been too large for the number of reviewing attorneys (10 in October 1977 and 20 in June 1978), and a backlog has developed. To respond to this problem, 15 additional attorneys were hired for OOR by April 1979.

However, while additional attorneys may help to expedite the OOR review process, even more can be done. For example, according to OOR top management, initial ALJ decisions do not always adequately explain how conclusions were reached, nor do these decisions always contain adequate citations (references) to the record, necessitating additional research on the part of the OOR attorney. As a result, OOR officials believe that a brief summary of key issues by the ALJ would help to expedite OOR review. OOR officials also believe that the availability of centralized legal precedent material might serve to speed case research. Both of these actions were also suggested in a 1976 Touche Ross study done under contract for FPC, but only limited action has been taken by FERC to date. (See pp. 68 and 69 for more detailed discussion of these problems.)

Several OGC attorneys, ALJs, the Chairman, FERC, as well as representatives of industry and the public have also suggested that the Commission limit its review of certain kinds of ALJ decisions. Such limitations could substantially reduce the OOR workload and the time it takes to complete its review process. In this regard, Commission rules currently ineffectively limit what cases receive full Commission consideration. These rules (18 C.F.R. 1.30) state that if no party files an exception to an ALJ's initial decision, the decision becomes final, unless FERC initiates a review of that decision within a specified time period. However, according to the Commission's Chairman and one OOR official, the losing attorney nearly always files an opposing brief to the initial decision, necessitating subsequent Commission review. Further, even if there are no briefs, current Commission policy would require OOR to review an ALJ decision.

Several governmental and private groups have also recommended that agencies, boards, and commissions limit the kind of ALJ decisions they review. Two of these studies suggested limiting review through legislation. In 1968, the Administrative Conference of the United States proposed that section 8 of the Administrative Procedure Act be amended to permit an agency to deny a petition for review of, or to affirm summarily, an ALJ decision in certain circumstances. The party seeking review would have to show (1) prejudicial procedural error (2) an erroneous legal conclusion or a finding of material fact, or (3) the presence of an important legal or policy question. A 1977 Senate study of the Federal hearing process also recommended legislation to permit certain ALJ decisions to become final unless reviewed by the agency in its discretion. The agency would review decisions that are not supported by substantial evidence or raise a novel and important issue of law or fact.

A recent American Petroleum Institute report of Federal administrative procedures affecting oil and gas regulation made a similar recommendation to be carried out by amending FERC's rules of practice. The report suggested that FERC adopt FPC rules that would provide for Commission review of ALJ decisions on one of the following grounds: (1) an erroneous conclusion of material fact or law, (2) contrary to law or Commission rules or decisions, or (3) prejudicial procedural error.

In his January 1980 report to the Congress 1/ on delays in decisions in wholesale electric rate cases the Chairman, FERC, also suggested that the Commission affirm ALJs' decisions summarily "much more often than it now does" and permit parties to seek rehearings of such decisions. In addition, the Chairman suggested that exception briefs filed by parties to a case subsequent to issuance of an ALJ's initial decision be required to follow a standard format, list errors of fact or law asserted, summarize the writer's arguments, and present a concise discussion of policy considerations that warrant Commission review.

With OOR review averaging close to a year, the present review process is obviously in need of some type of reform. In the meantime, outside parties like the Federal Administrative Law Judges Conference continue to claim that "* * * junior lawyers reviewing more experienced judges' work may be counterproductive and contrary to concepts of judicial independence and administrative finality." At least, two FERC ALJs we contacted also agree with this criticism.

Most Federal agencies, however, including the Commission, appear reluctant to limit intermediate review of ALJ decisions. Our prior report (FPCD-78-25, dated May 15, 1978) noted that most regulatory agencies like the Commission perform a duplicative review of all ALJ decisions primarily (1) to maintain final decision and policymaking authority at the Commission level and (2) to assure that ALJ decisions are reasonable and in accordance with agency policy.

However, we believe that the Commission should review options for limiting and expediting the OOR review process that do not require legislative changes. The Commission should also revise OOR review policy to reflect those options which would best accomplish this objective.

1/Report to Congress: Decisional Delay in Wholesale Electric Rate Increase Cases: Causes, Consequences and Possible Remedies. Charles B. Curtis, Jan. 1980. This report was submitted to the Congress, pursuant to section 207(b) of the Public Utility Regulatory Policies Act of 1978.

We also support the FERC Chairman's recent proposal that the Commission increase summary approval of ALJ initial decisions. In addition, we support the Chairman's proposal that such cases be automatically subject to rehearing upon solicitation by any party to the proceeding. Further, we support the Chairman's proposal that exception briefs filed subsequently to an ALJ's initial decision be required to follow a standard format, as well as list the errors of fact or law asserted to summarize the brief writer's arguments and to present a concise discussion of the policy considerations that warrant Commission review. Another time-saving benefit would result from meetings by the Director of OOR and the Chief ALJ to resolve their mutual concerns and establish reasonable constraints on the form, content, citations, support, and summary of ALJ initial decisions.

NEED TO DEVELOP A LEGAL PRECEDENTS MANUAL

Legal research also consumes an inordinate amount of staff time, sometimes in excess of a year, within the Commission's Offices of the General Counsel and Opinions and Reviews. This is due, in part, to the absence of centralized legal reference material to speed research of legal precedents and recent trends in Commission policy.

In response to this problem, Touche Ross, in a 1976 report to the Federal Power Commission, recommended that a manual of legal precedents, organized according to issue, be developed. It would be intended particularly for use by the Commission's Office of Opinions and Reviews, to speed evaluation of ALJ decisions, thus assuring they comply with prior legal precedents and trends in Commission policy.

Such a manual of key legal precedents on all major issues arising in FERC hearings might help expedite case processing in two ways. It could be used to train and speed the legal research of both OGC trial attorneys and reviewing (OOR) attorneys. It could also aid FERC in the development of generic rules (or general policy statements) to speed decisionmaking on repetitive issues. However, to date, the Commission has made only limited progress in this area.

However, while the Commission presently does not have such a legal precedents manual, we found that its Office of the General Counsel has developed a legal "training manual." This training tool summarizes key issues and other critical elements of Commission decisions for many major cases. In fact, OGC has used this manual as a textbook in a training course for new trial attorneys, primarily to help them improve the quality of their briefs.

We have not attempted to measure whether this training improved the quality of attorneys' briefs. However, according to Commission officials, a problem does exist. Part of the problem, in this regard, is that not all OGC trial attorneys have attended the course, and some are not even aware that such a manual or training exists. In addition, although OOR has many new attorneys, few have attended the training. Moreover, one of the Commission's ALJs noted that Commission attorneys still have only limited access to the full range of legal decisions because of inadequate library and research facilities and the lack of an index to past Commission decisions.

We believe that the Commission should use the present legal training manual to develop and periodically update a legal precedents manual for use throughout the Commission, particularly for use in the Offices of the General Counsel, and Opinions and Reviews. Development of this manual would centralize information on legal precedents and trends in Commission policy and help to significantly reduce the cost and time of legal research and expedite case processing.

Once developed, the Commission could also use this manual to help identify issues conducive to generic rulemaking. Also, with the legal case histories that this manual would provide, the Commission would be able to use the manual to help develop generic rules to prevent relitigation of similar repetitive issues.

NEED FOR IMPROVED RECORDKEEPING ON THE STATUS OF CASES PENDING COMMISSION ACTION

Inadequacies in the Commission's ability to account for the status of all cases pending final Commission action has also been responsible for extensive delays, some in excess of 3 years. This appeared to be primarily attributable to incomplete and unreliable program branch recordkeeping. It was a particular problem in multiple cases that were being delayed for years awaiting a decision on a single precedent-setting case pending final Commission action.

The April 1979 edition of FERC's "Hearing Process Status Report" shows that of 199 cases in the hearing process, the Commission had suspended action on 45. This report also details a variety of reasons for these suspensions. The three most frequent reasons cited involved (1) 6 cases (involving a total of 24 consolidated cases) that were awaiting the

Commission's decision on a related case (the decision on the one case would affect the others), (2) 4 cases that were awaiting Commission decision on appeal, and (3) 17 cases suspended for over 3 years but for which FERC was not knowledgeable regarding their status.

In 1978 Commission officials attempted to trace the status of the 17 cases which have been pending the Commission's action over 3 years, through the agency's program branch records, but were unable to determine their status. In February 1979, our prior report (EMD-79-28) cited this failure, and the Commission has since made further attempts to confirm the status of these cases. However, as of December 1, 1979, the Commission could account for the status of only a few of these cases.

Clearly, certain improvements are necessary in program branch recordkeeping to assure that agency management knows the status of all pending cases. Such action would enhance the value of the Commission's monthly "Hearing Process Status Report" and management's ability to expedite the processing of these cases. For example, the Commission would be promptly notified when action on multiple cases is held up pending decision on a single case. The Commission could then designate action in such cases as high priority. Improved recordkeeping was also recommended in a 1976 Touche Ross report to the Federal Power Commission.

INCREASED DELEGATIONS OF AUTHORITY NEEDED

Recently, in two different written reports to the Congress the Commission Chairman stated that one of his agency's most difficult administrative problems arises from the absence of express statutory authority to delegate final decisionmaking authority to staff without the right of appeal to the Commission itself. Although the Commission has experienced significant success in delegating limited amounts of authority to its staff subject to appeal, in the words of the Chairman, these delegations "as a practical matter" are "confined to spheres that are unlikely to be controversial. To extend it to other areas would merely add another layer to a decisional process that already has too many layers."

Each month, the Commission's agenda carries hundreds of items which it must consider and vote on. During the 6-month period December 1978 through May 1979, 1,168 items appeared before the Commission. During January 1979 alone, the Commission faced 244 items requiring action. The agenda frequently contains topics that are highly critical, that is, having a direct impact on the Nation's energy supply.

Under present law and procedure, however, the Commission must consider almost all items, regardless of their significance. Meanwhile, the lack of power to delegate "final decisionmaking authority" to staff has compounded the problem of delay and impaired the Commission's ability to expedite highly critical decisions.

As the following table shows, there were 51 postponed agenda items awaiting Commission action as of May 1, 1979, and 2 of these cases have been pending for well over 1 year.

Number of Days Agenda
Items Pending as of May 1, 1979

No. of days	No. of items postponed
0 to 30	8
30 to 60	8
60 to 90	10
90 to 120	3
120 to 270	17
270 to 365	3
365 to 730	2

On August 14, 1978, and on July 23, 1979, the Commission did, however, amend its rules to delegate limited authority for deciding matters characterized as routine to various staff office directors, subject to appeal within 15 days to the full Commission. According to the Commission, these delegations transfer more than 11,000 routine and uncontested matters annually to key staff members for decision. In fact, as a result of these delegations, the Commission Chairman recently stated in testimony before the Congress that an estimated 62 percent of all hydroelectric actions and 56 percent of all electric rate decisions can now be resolved at the staff level. Consequently, the Commission expects to benefit from a significant reduction in the size of its agenda. This, in turn, is expected to allow the Commission to devote more of its time to discussing its more critical cases and focus more attention on policy matters.

The Commission is also currently considering other delegations of authority to its staff, which could have an even greater impact on its caseload. Many of these proposals have been under consideration since early 1978. According to several Commission officials, as well as the Commission's Chairman, FERC has not acted on many of them because of continued uncertainties regarding express statutory power to delegate such authority and a conscious fear of adding another review layer to the decision process. For example, FERC is considering delegating authority to staff to decide suspension dates on wholesale electric rate cases. However, appeals may be made more frequently on this type of decision, thus requiring the full Commission to make the final decision anyway.

To respond to this problem, in a recent report to the Congress, 1/ FERC's Chairman expressed the need for express statutory authority to delegate, as appropriate, "final" decisionmaking authority to FERC staff, absent the right of appeal to the Commission itself as provided under present law. In this regard, he suggested that absent the right to delegate "final" decisionmaking authority, extending present delegation authority to other areas "would merely add another layer to a decisional process that already has too many layers."

In spite of these restrictions, however, recent delegations of authority, have clearly reduced the workload on the Commission's agenda and appear to have had a positive impact on the reduction of delay and case backlog. Therefore, we believe that, the Commission should continue to review its currently non-delegated functions to identify additional decisionmaking authority that can be transferred or delegated to key staff, subject to appeal, and effect these delegations immediately.

In addition, we support the FERC Chairman's recent recommendation in a report to the Congress that the Commission be granted express authority to delegate "final" decisionmaking authority where appropriate, to staff, absent the right of appeal to the Commission itself. Accordingly, we believe that the Commission, upon completing its review of all non-delegated functions, should formally request from the Congress the authority to delegate final decisionmaking authority for those functions it deems appropriate.

NEED FOR TIGHTER CONTROLS ON CASES PENDING COMMISSION CONSIDERATION FOR REHEARING

Inadequate controls over cases pending Commission consideration for rehearing have caused extensive delays due to the absence of reasonable, but strict, time limits on Commission action. In fact, we found a large volume of such cases held in "limbo" for close to a year, awaiting the Commission's reconsideration of its "final" decisions.

1/Ibid., p. 52.

Under current Commission rules (18 C.F.R. 1.34(c)), "Unless the Commission acts upon an application for rehearing within 30 days after it is filed, such an application shall be deemed to have been denied." The Commission may then suspend this 30-day constraint for an indefinite period with a "suspension" order granting rehearing for further consideration. However, Commission records indicate that, as of May 1, 1979, 154 cases were pending rehearing or reconsideration for an average of 213 days. In fact, two of these cases had been pending for well over a year.

Also, in two recent studies, both the Chairman, FERC, and several industry officials have charged that the Commission has been granting applications for rehearing all too often and postponed for an indefinite period of time the issuance of a decision after the rehearing. Further, in some instances, industry officials claim that reconsideration of some cases has substantially changed the result. As such, this practice contributes to undue delay in the issuance of final Commission orders.

According to a January 1980, report to the Congress by the Commission's Chairman, there is considerable merit to the arguments posed by industry officials. In his report, the Chairman said that currently:

> "* * * there is no limitation on the nature of the contentions that can be put forward in support of an application for rehearing. Facts and arguments can be unveiled for the first time in that paper. Such a practice undercuts all that has gone on before in a case. To avoid risking reversal, the Commission often feels obligated to respond to the new matter. Thus old cases drag on interminably. And new ones cannot be dealt with expeditiously, because both the Commission and its decisional employees are tied up with reconsiderations and rehearings."

Therefore, the Chairman has suggested that the Congress appropriately amend the Federal Power Act, Natural Gas Act, and Natural Gas Policy of 1978 to permit the Commission to waive rehearing provisions in appropriate cases. He said that "this would permit the Commission to allow direct appeals to the Court of Appeals in cases where nothing more is likely to be gained on rehearing or where early judicial action is desired." We agree.

In addition, we believe that the Commission should, at a minimum, place greater priority on its action on cases pending rehearing. As such, suspensions of time might be limited to reasonable deadlines. Subsequently, revision of present Commission rules might be considered to impose strict time limits on extensions the Commission allows itself beyond the present 30-day deadline. Further, as a standard to develop such criteria, the Commission should seriously consider present ICC requirements. Under these requirements, if ICC decides to extend its time limit on a rehearing decision, it may initially extend this time up to 90 days only upon issuance of a specific directive to this effect. Thereafter, it may further extend its decision time only upon finding certain exceptional case factors which must be defined in its rules of practice.

CONCLUSIONS

In spite of certain efforts made by FERC to reduce the time consumed, Commission decisionmaking is unnecessarily lengthy, taking up to 2 to 3 years in some cases. As such, in our opinion, a number of near-term improvements are needed to expedite case processing during this phase. These include the need for: (1) more expedient and effective intermediate legal review procedures for both hearing and nonhearing cases, (2) increased managerial accountability for cases pending final Commission action and reconsideration, and (3) increased delegation of the Commission's decisionmaking authority.

RECOMMENDATIONS TO THE CHAIRMAN, FERC

We recommend that the Chairman improve the efficiency and effectiveness of the Commission's legal review procedures by:

--Encouraging the heads of the Office of the General Counsel and technical staff offices to meet periodically to resolve their mutual concerns and establish reasonable constraints on the format, content, and support of technical staff input to OGC.

--Requiring technical staff to prepare memos in the form of draft orders as a means of accelerating the OGC review process.

--Encouraging the Director of the Office of Opinions and Reviews and the Chief ALJ to meet periodically to resolve their mutual concerns and establish reasonable constraints on the form, content, citations, support, and summary of ALJ initial decisions.

--Reviewing options for limiting and expediting the OOR review process and revising OOR review policy to reflect those options which would best accomplish this objective.

--Summarily affirming all ALJ initial decisions not meeting the aforementioned criteria.

--Requiring exception briefs filed subsequent to an initial decision to: follow a standard format, list errors of fact or law asserted, summarize the writer's arguments, and present a concise discussion of policy considerations that warrant Commission review.

--Developing and periodically updating a legal precedents manual for use throughout the Commission, particularly, the Office of the General Counsel, Office of Opinions and Review, and administrative law judges. Once developed, the manual should then be used as a research tool to speed the identification of appropriate legal precedents, trends in Commission policy, and issues conducive to generic rulemaking.

We also recommend that the Commission increase managerial accountability for cases pending final Commission action or reconsideration by

--developing a more reliable program branch recordkeeping and casetracking system to monitor cases pending completion of OGC review and final Commission decision,

--placing a higher priority on Commission action in cases pending rehearing by initially limiting extensions of time for decisions on rehearing requests to a firm, but reasonable, time period (i.e., 90 days), and thereafter allowing further extensions only upon finding certain exceptional case characteristics specifically defined in its rules of practice and procedure, and

--formally requesting from the Congress appropriate legislative authority to permit the Commission to waive rehearing provisions in appropriate cases.

We recommend further that the Commission increase the delegation of agency authority for routine noncritical case decisionmaking by

- --reviewing all non-delegated functions to determine which can be transferred or delegated to key staff, subject to appeal, and delegating these functions immediately and
- --formally requesting from the Congress authority to delegate final decisionmaking authority for those remaining functions it deems appropriate.

CHAPTER 6

OVERALL MANAGERIAL INITIATIVES NEEDED

Management studies conducted over the past 4 years have repeatedly recommended that FERC and its predessor, FPC, increase its management control, accountability, and regulatory efficiency. As a result, the Commission has taken some actions to respond to these recommendations, such as moving toward establishing an integrated management information system and delegating increased authority to appropriate Office Directors. However, in spite of these corrective measures, unnecessary, lengthy delays and large volumes of case backlog remain throughout the agency's decisionmaking process.

As previously discussed, specific procedural improvements in the technical analysis, hearing, and Commission decisionmaking phases of the agency's caseload management process will certainly help to reduce unnecessary delays. However, in our opinion, such improvements alone will not suffice to bring case processing time down to reasonable levels. Certain overall management initiatives are also necessary to address the Commission's broader problems of management control, accountability, and regulatory efficiency. These problems include:

--inadequate managerial accountability for (1) processing delays, (2) efficiency, and (3) overall work performance because of an unjustifiable reluctance on the part of management to assign project managers to more than 1 percent of its caseload in process;

--serious deficiencies in the Commission's management information system caused by an incomplete, decentralized, and inaccurate data base as well as an overly cumbersome and time-consuming manual reporting system which significantly limits its usefulness as a management decision tool;

--lack of incentives such as deadlines, monetary fines, and case dismissal to expedite case processing because of serious doubts concerning the Commision's authority to employ such techniques to discourage delay; and

--inadequate use of generic rulemaking to prevent unnecessary relitigation of common or "generic" issues in case after case in the absence of any agreement among Commission staff, industry, and consumer groups regarding the need for its implementation.

INCREASED MANAGERIAL ACCOUNTABILITY NEEDED

Numerous attempts have been made by the Commission over the years to establish elaborate internal monitoring and control systems to identify case processing problems in need of corrective action. However, there presently remains no single individual or group that can be held accountable for all processing delays, inefficiencies, and overall work performance. This problem was also pointed out to the Federal Power Commission in a contract study completed for its use by Touche Ross in July 1976. In response, FERC has recently been highly successful in increasing managerial accountability for about 100 of its most energy-critical cases by appointing senior staff members as project managers accountable for the progress of these cases. However, these 100 cases represent less than 1 percent of the Commission's caseload, and the agency management appears to be unjustifiably reluctant to assign project managers to more cases. In the meantime, there are more than 10,000 backlogged cases.

In view of the agency's persistent accountability problem, the project manager concept was implemented as an alternative to the Commission's "baton method" in which casework passes from office to office with no one individual or group responsible for its progress. Under the project manager concept, senior staff members have primary responsibility for monitoring the progress of each case. They also must coordinate technical staff review, although they are not personally held accountable for processing delays. They are also responsible for preparing a summary memo for each critical case on the Commission agenda. If necessary, the manager must also provide an oral summary of the case at Commission meetings, relieving other senior staff personnel from continous attendance. In addition, the project manager furnishes case status information for the Commission's monthly management information system. This information is used to track the progress of 100 critical projects as well as to identify specific reasons for delay.

Since its implementation for this limited number of cases, the project manager concept has been clearly successful. During congressional budget testimony on March 31, 1979, the Commission Chairman stated that critical energy cases under the project manager system are moving 40 percent faster than they did a year ago. Also, we reviewed more than 1,000 Commission cases and found in most instances that the time consumed for processing critical cases is less than the overall processing time for non-critical cases. In fact, the success of the project manager idea has prompted

Commission officials to suggest that it be expanded to include more cases. In this regard, one Commission official recently told us that agency management is considering expanding the project manager concept to include (1) consolidated cases whose total energy value equals or exceeds that of individual critical cases and (2) cases which may set a precedent for decisions in other cases.

However, to date, FERC has not taken any action toward expanding use of the project manager concept. In this regard, while the concept seems to have had a positive impact on expediting a limited number (about 100) of critical projects, there is much concern being expressed by FERC officials as well as outside parties that its effectiveness may be diluted by expansion. The Executive Director also recently expressed concern over the possibility that these critical cases might be moving at the expense of the noncritical cases.

We believe, however, that despite these concerns, further expanded use of project managers should be considered. We also believe, however, it would be wise to limit such expansion initially to the energy-critical consolidated cases and precedent setting cases presently under consideration by agency management. Subsequently, the Commission would be in a better position to objectively evaluate whether this expansion "dilutes" the benefits of the project manager approach before it decides whether or not to expand the concept further.

In addition, the Commission should consider expanding the role of the project manager to include accountability to top management for delays in case processing from receipt until a case reaches hearing or final Commission decision. This would help to expedite the identification of regulatory bottlenecks as well as accountability for their resolution.

The project manager also might be held responsible for supervising as well as coordinating technical staff review on critical cases. This should help to expedite development of a staff position early and aid early identification of key issues to prevent unnecessary delay in the later stages of case processing.

IMPROVED CASE MONITORING EFFORTS NEEDED

In 1976 Touche Ross completed a contract study for the Federal Power Commission which pointed out the need for a centralized case tracking system to report on overall caseload information and individual case status. Touche Ross also recommended that on the basis of this information, the Commission establish managerial performance objectives. In response, on November 1977, FERC established a Management Information System (MIS) to monitor, on a monthly basis, the progress of all assigned casework within the Commission. This system is designed to (1) identify regulatory process bottlenecks, (2) determine whether additional manpower and supporting resources can reduce the time required to effectively complete staffwork, (3) aid top management in planning and prioritizing critical projects as well as other casework, (4) establish standard goal times for completion of casework, and (5) bring critical issues before the Commission for final decision.

The MIS is clearly a major positive step toward identifying bottlenecks in case processing. However, its usefulness as a management decision tool is needlessly being hampered by a decentralized, incomplete, and inaccurate data base as well as an overly cumbersome and time-consuming support system.

One serious problem is incomplete and inaccurate data which has resulted from the lack of effective data coordination between the Commission's individual program offices and its Office of the Executive Director, which is charged with the responsibility of administering the MIS. In fact, in more than 400 cases we examined, we found frequent instances of missing entries in the management information system as well as a lack of agreement between MIS dates and those found in original applicant source documents and program branch records. For example, an official case list provided to us by the Commission on April 27, 1979, showed 127 selected gas pipeline cases resolved by Commission order in calendar year 1978. However, when we attempted to compare this listing with those contained in the MIS, we found that 58 percent of them had never been tracked in the MIS. Similarly, we found that 22 percent of the cases being tracked within the MIS were not contained on the official case list.

Still another problem is that the MIS data base is not currently integrated or centralized, even though Commission efforts have been underway for over 2 years to correct this situation. Presently, each major office, division, and branch continues to maintain and rely on its own caseload tracking systems, in addition to the MIS, in spite of considerable duplication and system overlap. The basis for this decentralized approach is that each subsystem contains more detailed information and action dates than contained in the overall MIS to better serve lower level management user needs. For example, the Office of the General Counsel manually records the dates a case is received and a draft order is issued by OGC, but these dates are frequently not tracked within the MIS. FERC officials explained that such dates are not frequently tracked by the MIS because they are of no significance to top management. However, we believe that without such data, it is difficult for top management to effectively identify bottlenecks causing delay in OGC's case processing.

Still another problem is that the management information system lacks verified historical data with which to measure its progress in reducing the average time it takes an individual case to move through the major processing steps. Currently, "standard" average case processing times are published monthly in the Commission's monthly case status books for all major categories of its cases and used as a gauge by management to measure case progress. However, they are currently based only on the "guess work" of the Commission's more experienced personnel. We believe, however, if instead these average timeframes were based on verified historical data, they would represent a better gauge with which to measure the Commission's progress in reducing unnecessary delay.

Finally, full automation of the management information system's manual support system appears to be urgently needed. As of January 1980, FERC initiated efforts to automate only a small portion of the overall system. According to many FERC officials we contacted, the manual method of preparing monthly status reports currently requires considerable personnel efforts, and is unnecessarily cumbersome and time consuming. Therefore, we believe the Commission should expedite the full automation of its manual method for preparing monthly MIS status reports to enhance both its reliability and accuracy, and recommit funding and staffing saved to the reduction of backlog and regulatory delay.

Further, FERC staff apparently agree with our proposal to improve the MIS. In March 1980, in commenting on a draft of our report, FERC officials said that they have now begun efforts to increase the accuracy, detail, and automation of the MIS.

NEED FOR STRICT TIME LIMITS ON AGENCY ACTIONS

Prior studies have concluded that consideration should be given to imposing strict time limits on how long the Commission can take to decide its cases. Further, the Commission's Chairman apparently agrees. In a January 1980 report to the Congress as well as at a recent Washington press conference and subsequent meetings with representatives of the American

Public Power Association earlier this year, the Chairman suggested that a viable approach to resolving "pancaking," or stacking up of successive wholesale electricity rate increase applications pending Commission decision, would be to amend the Federal Power Act to impose a 1-year limit on rate-case decisions. This may mean that in some situations, the Commission would have to make a decision based on a partial record.

However, according to Commission officials we contacted, strict deadlines have never been imposed because of considerable doubt that the Commission has the authority to enforce such deadlines. Also, based on our review of over 1,000 FERC cases, it is doubtful that the Commission could, in the near future, adequately review and resolve most of its cases within a 1-year limit.

Our review of available Commission records showed that as of March 1, 1979, 87 percent of all cases in progress were not completed within the voluntary time limits the Commission had established. Further, in most instances, even the Commission's established goal timeframes were substantially in excess of the 1-year limit proposed by the Commission's Chairman. Even worse, several Commission officials consider these goals unrealistic.

Many outside observers have suggested that unnecessary delays might be reduced if the Commission set at least firm deadlines on the various phases of its regulatory process. Numerous regulatory reform bills proposed in the Congress during the past year have also suggested that specific time limits be set on decisionmaking by Federal regulatory agencies. For example, Senate bill 1308, offered by Senator Henry Jackson, Chairman of the Senate Energy Committee, would require deadlines on certain high-priority cases before the Commission as well as throughout the Department of Energy.

In addition, most State utility commissions and some Federal agencies are already subject to such constraints. According to the National Association of Regulatory Utility Commissioner's 1975 Annual Report, about 75 percent of the States place time limits on their ratemaking Commissions. Such Federal agencies as the Civil Aeronautics Board, the National Labor Relations Board, and the Interstate Commerce Commission reportedly have also enjoyed much success with deadlines fixed on varous stages of their regulatory process.

We believe, therefore, that the Commission should impose reasonable deadlines on the various phases of its regulatory process at least on a trial basis. Deadlines would clearly provide a sorely needed disincentive for unnecessary delays and alert the Commission to the need for corrective action when such delays are noted. In any particular proceeding, deadlines would also inform participants in advance when they must be ready to meet filing dates, participate in hearings, or the like. This would help prevent delays due to scheduling problems. Deadlines would also make agency officials more accountable to agency heads and to the public for their record of success or failure in completing proceedings in an expeditious manner. As such, they would provide incentives for agency officials to expedite the stage of the proceeding for which they are directly responsible. Finally, deadlines would enable agencies, such as FERC, to follow schedules that reflect their priorities.

While the Commission does not presently have explicit statutory authority to establish deadlines, we believe that the Commission should examine whether it has authority to establish deadlines under Section 401 (f) and 402 (h) of the Department of Energy Organization Act, P.L. 95-91. These provisions authorize FERC to establish substantive and procedural rules for carrying out its functions. If not, it should seek this authority from the Congress. FERC should also establish and periodically revise reasonable target dates or deadlines for all major processing steps as well as entire case proceedings. Any staff failure to meet a deadline should be explained on a monthly basis for each major category of backlogged cases in the management information system case status books and appropriate action taken by management. Currently, such action appears to be limited to approximately 100 of FERC's most energy-critical cases. Strict deadlines would also provide a firmer basis for using monetary fines and case dismissal to discourage delay on the part of applicants (see below) and for imposing stricter limits on admitting late intervenors.

NEED FOR IMPOSITION OF SANCTIONS TO DISCOURAGE DELAYS

At least four management studies have also concluded that regulatory agencies such as FERC should use civil monetary penalties as well as other available sanctions to discourage unnecessary regulatory delay. These studies were performed by us in 1975, by Touche Ross in 1976, by the Senate Governmental Affairs Committee in 1977, and by the Administrative Conference of the United States in 1972. However, we found no record of monetary penalties imposed by FERC to penalize parties for unnecessary delay. Also, according to Commission officials we contacted, case dismissal 1/ has rarely, if ever, been used as a means to discourage delay.

Monetary penalties were viewed as insufficient to discourage delay and not in the best interest of the consumer to whom these penalties might be passed on in the form of higher energy costs. In addition, case dismissal was viewed as unnecessarily harsh for relatively minor offenses and not in the best interest of the consumer who is dependent on vital services provided by the applicant.

In our opinion, however, the potential for adverse publicity by the media should help to discourage most applicants from unnecessary delays which would result in monetary penalties or case dismissal. In fact, in a May 1978 internal management study, Commission staff recognized an urgent need for for these types of penalties and inducements to discourage applicants from causing unnecessary delay. In this regard, FERC staff estimated that energy-critical cases representing over 15 billion cubic feet of gas per day and nearly 6,600 megawatts of electricity per day were pending action in February 1979. Undue delays in processing these projects may have prevented critical energy supplies from being made available in a timely fashion and frustrated the accomplishment of our national objective, to minimize our dependence on foreign energy sources. Further, because of such delays, there are inadequate assurances to consumers that energy costs are justified, since the Commission, by statute, allows proposed rate increases to become effective prior to final Commission decision.

However, the Commission's authority to assess the civil penalties against a party to a proceeding for intentional delay or the failure to provide required information is currently limited. The Commission may levy civil fines only under the Federal Power Act and the Natural Gas Policy Act of 1978. More specifically, Section 315(a) of the Federal Power Act limits the Commission, after notice and a hearing, to fine a licensee or public utility only up to $1,000 for willful failure to comply with any order or submit any information or document required during the course of an

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1/ As used in this chapter, the term "case dismissals" means a final FERC decision or other action, to reject or discontinue consideration or processing of an application or request for agency action.

investigation within the time prescribed. In addition, under Section 504(b)(6) of the National Gas Policy Act, the Commission may assess a civil penalty of only up to $5,000 per day against any person who knowingly violates any provision of the act or any rule or order under it. According to Commission officials, however, (1) such penalties have not been levied and (2) would not have been powerful deterrents to unnecessary delay had they been levied.

In this regard, the Chairman, FERC, in response to a March 1978 Senate inquiry, suggested that FERC be granted increased authority to impose penalties of up to $25,000 a day under the Natural Gas Act, the Federal Power Act, and the Interstate Commerce Act. However, the Commission has not formally requested such authority from the Congress.

We believe that the Commission should actively seek from the Congress new legislative authority to impose monetary civil penalties of up to $25,000 per day as recently recommended by the Commission's Chairman. We also believe that the Commission should use both presently available monetary penalties and seek appropriate authority to employ case dismissal as inducements to discourage unnecessary delay on the part of the applicants when deadlines have not been met and such action is determined by the Commission to be in the public interest.

NEED FOR EXPANDED USE OF GENERIC RULEMAKING

Several officials of the Commission and representatives of the industry it regulates have recognized the value of establishing generic rules on issues common to many cases to reduce or eliminate the need to relitigate similar issues. In fact, the Commission's Chairman recently described the agency's decisionmaking process as "seriously flawed" and "anarchistic" because it presently relies on case-by-case adjudication, which cannot be completed in time to catch up with the market place of today. He contended that the Commission needs to consider alternative means of decisionmaking. Two such alternatives he suggested were to rely as much as possible on generic rulemakings involving general policy statements or on a lengthy formal hearings process to generate precedent-setting decisions for resolving repetitive issues. However, we found implementation of either alternative stifled by lack of agreement among Commission staff, as well as industry and consumer groups, regarding the value of generic rules in reducing case processing delays.

Even the Commission's most recent attempts to evaluate these alternatives have seemingly proven unsuccessful. In August 1978, the Commission issued a proposed rule change for public notice and comment on this and other subjects. However, the Commission, industry, and consumers remained argumentative as well as split on the value of one alternative over the other. Those who supported "precedential adjudication" to decide generic issues contended that sound policy could only be found in the context of actual case facts. On the other hand, those who supported generic rulemaking contended that broad-based general policy issues could not be resolved in the adjudication of a single case. They maintained that all aspects of a generic problem may not be germane to the facts in a particular case. They also maintained that many protestors lack adequate financial resources to participate in formal Commission hearings.

We believe that the Commission should make greater use of generic rulemaking on key issues. These rules would serve as key reference points for Commission policy to ALJs and Commission staff on specific cases. During our review, there appeared to be much support among Commission officials as well as outside parties for increasing the use of generic rulemakings as guidelines. In fact, since the commencement of our review, a number of such generic rulemakings have been proposed, although not yet approved, including: (1) statewide exemptions for States from incremental gas-pricing programs that retain revenues collected within the State without formal Commission approval and (2) certain exemptions from incremental pricing rules for new small boiler fuel facilities (under 300 Mcf per day).

In addition, our review of recent industry comments and our numerous interviews with Commission officials indicate that many other issues have been identified as having been ripe for generic rulemaking for at least 10 years. These include the accounting treatment of construction work in progress, accounting standards for computing a company's rate base, and rate of return; standards for accounting and rate treatment of utility expenses; and minimum data requirements for applicants.

In April 1979, the Commission also formed an advisory committee whose functions included identifying even more issues appropriate to generic treatment. Thus far, the only written product from the committee is a July 1979 report on improvements needed in the electric rate case decision process. However, this report points out a critical need for increased generic rulemaking to fill the gap for currently inadequate policy guidance to staff, applicants, and intervenors. The study also notes that, in the absence of generic rulemaking, Commission staff, including its ALJs, are presently left to decide certain issues common among electric rate cases. Therefore, critical decisions are now being made by FERC staff and ALJs with what some might describe as blind adherence to a prior Commission opinion considered to be pertinent or through the development of their own solutions to problems. The same study also points out the need for generic policy guidance to applicants and intervenors to increase their preparedness for formal hearings and to narrow the issues subject to review. Clearly, then a somewhat less refined decision made generically may be better than a more refined decision rendered 2 years later. As such, the aphorism of "justice delayed is justice denied" would seem to be applicable here. For example, an adjudicatory decision on an applicant's cost of capital 3 years from now may be less useful than a prompt decision on this year's cost based on a generic rule.

In summary, we agree with the basic thrust of generic rulemaking. Further, generic rulemakings should be included among what the Commission currently considers to be its highest priority actions because of its potential impact on reducing delay in multiple cases currently pending Commission decision on a single issue.

CONCLUSIONS

As has been recommended repeatedly in management studies conducted over the past 4 years, we believe that, despite some progress the Commission has made in reducing regulatory delay, certain overall management initiatives remain necessary for the Commission to more effectively increase management control, accountability, and regulatory efficiency and effectiveness. Specifically, the Commission needs to (1) expand the accountability of its project managers for high-priority energy cases; (2) improve the accuracy, completeness, and efficiency of its management information system; (3) encourage stricter adherence by staff to established target dates and deadlines; (4) encourage greater use of monetary fines and case dismissal to discourage unnecessary delays on the part of applicants; and (5) expand the use of generic rulemaking to prevent repeated review and decisionmaking on similar or generic issues.

RECOMMENDATIONS TO THE CHAIRMAN, FERC

We recommend that the Commission:

--Increase managerial accountability for processing delays, efficiency, and overall work performance by (1) increasing the number of staff members designated as project managers, (2) expanding the role of project managers to include full accountability to top agency management for delays in case processing until a case reaches hearing or final Commission decision, and (3) holding project managers responsible for supervising and coordinating staff review on all their cases.

--Increase the accuracy, completeness, and efficiency of the present management information system by (1) incorporating verified historical data on average case processing time, (2) centralizing the MIS subsystem data bases, (3) supplementing the present MIS manual report system with more detailed information to meet the needs of lower level management, and (4) fully automating the current manual method for preparing monthly MIS status reports.

--Increase incentives for expediting case processing by (1) establishing and strictly enforcing reasonable target dates and deadlines for all parties to a case with the deadlines based on periodically updated historical case completion times, (2) requiring project managers to provide explanations for failure to meet prescribed deadlines in the Commission's monthly MIS case status reports for all cases assigned and identify the appropriate actions needed to resolve these cases within the prescribed timeframes, and (3) using currently available monetary penalties as well as seeking authority to dismiss cases in order to discourage unnecessary delay by applicants when prescribed deadlines have not been met and such action is in the public interest. Also, actively seek from the Congress new legislative authority to impose increased monetary civil penalties of up to $25,000 a day.

--Expand the use of generic rulemaking to prevent unnecessary relitigation of common, or generic, issues and include these rulemakings among what the Commission considers to be its highest priority actions.

PRIOR FERC MANAGEMENT STUDIES

FERC STUDIES

--Report to Congress: Decisional Delay In Wholesale Electric Rate Increase Cases: Causes, Consequences and Possible Remedies. Charles B. Curtis, January 1980.

--Review of the Electric Ratemaking Decisional Process. FERC Advisory Subcommittee on the Electric Ratemaking Decisional Process. July 1979.

--FERC Monthly Case Status Reports. Office of the Executive Director. November 1977 to present.

FPC STUDIES

--Comprehensive Management Study Series. Touche Ross and Co.

Administrative Management Survey for Improving Organization Functions-Management Process. Touche Ross and Co., July 1976.

Case Processing Analysis: Electric Rates-Hydroelectric Licenses-Pipeline and Producer Certificates. Touche Ross and Co., October 1976.

Analysis of the Processing of Cases Pending the Issuance of Final Commission Order. Touche Ross and Co., December 1976.

Federal Power Commission Workload Management System. Touche Ross and Co., February 1977.

CONGRESSIONAL STUDIES

--Federal Regulation and Regulatory Reform. House Committee on Interstate and Foreign Commerce, October 1976.

--Delay in the Regulatory Process. Senate Committee on Governmental Affairs, July 1977.

GAO STUDIES

--Problems in Licensing Hydroelectric Projects (RED-76-13, Sept. 23, 1975).

--Management Improvements Needed in the Federal Power Commission Processing of Electric Rate Increase Cases (EMD-76-9, Sept. 7, 1976).

--Administrative Law Process: Better Management Is Needed (FPCD-78-25, May 15, 1978).

--Review of Administrative Law Judge Activities and the Hearing Process at the Federal Energy Regulatory Commission (EMD-79-28, Feb. 13, 1979).

--Management Improvements in the Administrative Law Process: Much Remains to Be Done (FPCD-79-44, May 23, 1979).